



# **Missouri Department of Natural Resources**

## **Clean Water Commission Water Protection Program**

### **Meeting Minutes**

**September 7, 2005**

1           BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES  
2                                 STATE OF MISSOURI

3

4

5

6

7

8

9

10

11

12

13

COMMISSIONERS PRESENT:

14

Chairman Thomas Herrmann

15

Commissioner Ron Hardecke

16

Commissioner Cosette Kelly

17

Commissioner Kristin Perry

18

Commissioner Paul Hauser

19

Commissioner William Easley, Jr.

20

21

Reported By:

Carri Cornelison

22

714 W. High St.

23

Jefferson City, Missouri

24

(573) 636-7551

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

1 CHAIRMAN HERRMANN: If I could sort through my ton  
2 and a half paper that I brought with me, we'll call  
3 the September 7th, 2005, meeting of the Missouri  
4 Clean Water Commission into order. Introduce to you  
5 the people at the head table. I'm Tom Herrmann,  
6 Chairman of the Commission from St. Louis. On my  
7 left is Paul Hauser, Commissioner from Kirkwood,  
8 Missouri. Next is Cosette Kelly, Commissioner from  
9 Independence. Ron Hardecke, Commissioner from  
10 Owensville. Kristin Perry, Commissioner from  
11 Bowling Green and Bill Easley, Commissioner from  
12 Cassville. On my right is Ed Galbraith, the  
13 Director of the Program. And next to him is Bill  
14 Bryan from the Attorney General's Office who's  
15 assigned to the Commission for legal advice and  
16 counsel. And at the end of the table is the person  
17 who keeps all of us in order and does all the work,  
18 Marlene Kirchner, Secretary to the Staff and  
19 Secretary to the Commission. I'd like to have Ed  
20 make a couple of introductions first.

21 MR. GALBRAITH: Thank you, Mr. Chairman. There are  
22 a - five members of our Executive Staff with the  
23 Department here today and I'd like to ask them to  
24 stand and be recognized. As I call their name,

1   also, if there are any things if you would like to  
2   address the Commission at this time, please do so.  
3   I'd like to start with our Deputy Director - Deputy  
4   Director for Policy, Mr. Floyd Gilzow.  
5   MR. GILZOW:  Mr. Chairman, thank you.  I'm Floyd  
6   Gilzow, Deputy Director for Policy for the Department  
7   of Natural Resources.  Director Childers regrets  
8   that a prior commitment out of state prohibits his  
9   being present today, but asked me to share his  
10   support for the final order of rulemaking on the  
11   Missouri's water quality standards.  Today, the  
12   Department requests the Commission vote to approve  
13   that final rule order of - that final order of  
14   rulemaking, including both the Department's  
15   recommendations and any changes the Commission deems  
16   appropriate.  Today's action is a combination of  
17   many months of hard work by the Commission,  
18   stakeholders, Department Staff, as well as countless  
19   citizens across the State.  The efforts included  
20   hundreds of hours of informal discussions,  
21   negotiations, as well as many important milestones.  
22   Within the compressed timeframe allowed by the  
23   recent lawsuit settlement, the Department has  
24   utilized local and state media to advise as many

1 people as possible about this process to evaluate  
2 their streams. We issued thirteen - a total of  
3 thirteen press releases over six hundred media  
4 outlets. We had over a hundred media calls, we've  
5 held news conferences by Webcast, mailings to  
6 thirty-seven hundred stream teams. We've conducted  
7 UAA Webcast training for two hundred municipalities  
8 and contractors, as well as providing up to date  
9 postings of all significant documents. The rule  
10 that is proposed today will increase the number of  
11 stream miles classified for whole body contact  
12 recreation by three hundred eighty-two percent from  
13 around fifty-five hundred miles to over twenty-one  
14 thousand miles. Over ninety-six percent of all  
15 classified streams will designate for whole body  
16 contact recreation. Today's order of rulemaking  
17 contains changes to the Table H designations for  
18 whole body contact based on UAA's received. Of the  
19 three hundred ninety-six UAA's reviewed, the  
20 Department recommends removing the use on one  
21 hundred fifty-three. In addition to comments on the  
22 rule, the Department received over twelve hundred  
23 responses from the public on the UAA's. Staff have  
24 collected these responses to assist the Commission.

1 In particular, Staff have noted those stream  
2 segments where at least one member of the public has  
3 indicated the stream is used for whole body contact  
4 or meets the criteria for whole body contact. For  
5 the record, the Regulatory Impact Report was placed  
6 on public notice on October 16, 2004. After the  
7 public comment period and revisions, the final RIR  
8 and draft proposed rulemaking were approved by the  
9 Commission on March 2, 2005. The proposed amendment  
10 was published May 2, 2005. The Commission conducted  
11 its public hearing on July the 6th. The public  
12 comment period ended on July 14th. The Department  
13 posted its recommendations on all use attainability  
14 analysis on July 25th, accepted information from  
15 interested parties on the UAA's after that. The  
16 deadline for accepting additional information was  
17 August 24th; however, the Department has accepted a  
18 few comments that came in past that date. If  
19 approved by you today, the rulemaking will be filed  
20 with the Joint Committee on Administrative Rules on  
21 September 12th, and with the Secretary of State on  
22 October 12th. We anticipate the effective date of  
23 the rule to be December 31st, 2005, which places us  
24 in advance of the April 30th deadline required as

1 part of the settlement of the suit against the EPA.

2 You all are also aware that the rule makes  
3 additional changes as part of that settlement and  
4 I'm not going to bore you by going through those.  
5 Thank you for being here today. I'm sure that if  
6 there are any questions, either Phil or I will be  
7 able to answer those questions during that part of  
8 his presentation.

9 CHAIRMAN HERRMANN: Thank you, Mr. Gilzow.

10 MR. GALBRAITH: Next, I'd like to introduce Deputy  
11 Director Mike Wells. Mike, will you stand up?  
12 Mike, is there anything you'd like to share with the  
13 Commission? Okay, thank you. Deputy Director in  
14 Department Counsel Kurt Schaefer. Okay, thanks. I  
15 believe - I'm not sure if Trent Summers is here.  
16 Trent, are you here this morning? Okay. Trent  
17 Summers is our Legislative Liaison and Earl Pabst is  
18 also here. The new Deputy Director for the Division  
19 of Environmental Quality. Thanks. Thank you, Mr.  
20 Chairman. Forgive me, I have one more. Jim Macy,  
21 the new Director of the Division of Field Services  
22 is with us today as well. Thank you, Mr. Chairman.  
23 We also have with us today Leo Alderman, Director of  
24 Water for Region Seven EPA. Leo, if you'd like to

1 stand and be recognized. Are there any comments



2     that you'd like to make at this point?

3     CHAIRMAN HERRMANN: Our first item in the Agenda

4     booklet is the approval of the minutes of the June

5     16th, 2005, teleconference, and the July 6th meeting

6     of the Clean Water Commission. Those have been

7     included in the packet. I'm sure studied and

8     digested by the Commissioners and unless there are

9     changes or additions or corrections, the Chair would

10    entertain a motion to accept those and enter them

11    into the record.

12    COMMISSIONER HAUSER: Motion to approve the

13    minutes and enter them in the record.

14    COMMISSIONER HARDECKE: Second.

15    CHAIRMAN HERRMANN: Moved and seconded. Please call

16    for the vote, Marlene.

17    MS. KIRCHNER: Commissioner Easley?

18    COMMISSIONER EASLEY: Yes.

19    MS. KIRCHNER: Commissioner Hauser?

20    COMMISSIONER HAUSER: Yes.

21    MS. KIRCHNER: Commissioner Kelly?

22    COMMISSIONER KELLY: Yes.

23    MS. KIRCHNER: Commissioner Perry?

24    COMMISSIONER PERRY: Yes.

1     MS. KIRCHNER: Commissioner Hardecke?

2     COMMISSIONER HARDECKE: Yes.

3 MS. KIRCHNER: Chairman Herrmann?

4 CHAIRMAN HERRMANN: Yes. The next item in the Agenda

5 booklet is the Water Quality Standards rulemaking.

6 Phil Schroeder will make the presentation and staff

7 recommendation.

8 MR. SCHROEDER: Thank you, Mr. Chairman, and good

9 morning Commissioners. I don't think I have ever

10 appreciated the Commission more than I do this

11 morning. You - you all certainly have a large task

12 and a very important job. And if I follow any of my

13 sentences this morning with a heavy sigh, it's - I

14 hope you don't take offense, but I'm just reflecting

15 on some of the comments that Mr. Gilzow made about

16 the tremendous effort that's been put into this

17 rulemaking process and it involves most of the

18 people that are in the audience today and I want - I

19 just want to say that I appreciate the time that

20 they spent with Staff and all of our discussions and

21 hopefully what we have to present to you today is

22 something that's a culmination of all those

23 discussions and we end in the right - right

24 decision. Well, I'm prepared to jump right into it.

10

1 What I'd like to do first is kind of go through an

2 inventory of what you should have in front of you.

3 Like Chairman Herrmann said, it may be a pile of  
4 paper and I'd like to just kind of go through that  
5 real quick. Make sure we have all the documents in  
6 front of us that we may need in order to thoroughly  
7 review this final order of rulemaking. And then  
8 following that, I'd like to go through the final  
9 order of rulemaking and touch upon the points which  
10 I think are major issues that were raised during the  
11 comments that we have received during the public  
12 comment period on the rule. And then, I'd like to  
13 finish by simply going through the rule itself and  
14 talk about the changes that we made that are  
15 presented before you in the final order of  
16 rulemaking. You should have in front of you a  
17 briefing of - on both what we're going to ask of you  
18 today in terms of your decision to act upon a final  
19 order of rulemaking. It just briefly goes through  
20 the history of this process. It's only a two-page  
21 document. Underneath that should be the actual  
22 draft final order rulemaking for both the effluent  
23 regulations and the water quality standards. Within  
24 that packet - within that document, you should find

11

1 the comments - summaries of the comments that were  
2 received during the public comment period on both  
3 those rules and also the responses - Staff responses

4 to those comments. And they should be organized by  
5 topical headings and then by some numbers so we can  
6 refer to those easily later on when we get into  
7 those discussions. You should have been sent three  
8 binders containing information. The first binder  
9 should have a memo from Ed Galbraith. It's dated  
10 September 1st, which says that the binders are  
11 divided into - into four parts. The first binder  
12 with that memo in it actually contains the comment  
13 letters on the rulemaking. The other two binders  
14 contain comments on the use attainability analysis that  
15 were conducted during this rulemaking process. You  
16 may also need to have in front of you the actual  
17 register posting on May 2nd. That's the proposed  
18 rulemaking and if you don't have that in front of  
19 you, I do have seven copies here to pass out to the  
20 Commissioners, but we may want to make some  
21 reference to that. And the reason for that is that  
22 the final order of rulemaking only contains the  
23 parts of the rules where changes have been made so  
24 if any comments are made about other portions of the

12

1 proposed rule that did not become subject to a  
2 change that's printed in the final order of  
3 rulemaking, then you may need to have reference to

4 that as well. But I do have copies of that in case  
5 you need those. In fact, why don't I just go ahead  
6 and pass those out? Again, there's seven copies  
7 there. I'd like to start with discussions on the  
8 water quality standards and go through some of the  
9 comments that we'd received on that rule and talk  
10 about our responses to some of these. Now,  
11 obviously, you can't go through all the comments  
12 that were made. That would take up the entire day,  
13 I'm sure. But if there are other comments that I  
14 don't mention here that you'd like to discuss,  
15 please, of course, let me know. The first item is -  
16 is what we've listed as Item Number Thirteen and  
17 this would appear in your packet under the order of  
18 rulemaking on Page Fifteen regarding bacterial  
19 standards. I'll let you have a second to find that.  
20 It's Page Fifteen of Thirty-seven of the final  
21 order of rulemaking. Have you been able to find  
22 that? Yes. Okay, under that Item  
23 Thirteen, bacterial standards, we've received a  
24 comment from EPA that stated that they would not be

13

1 able to accept the bacteria criteria for what we  
2 proposed as Category B on whole body contact  
3 recreational use designations. The criteria that we  
4 had proposed was five hundred forty-eight and the

5 standard that they feel that they must hold us to is  
6 two hundred six colonies per one hundred milliliters  
7 of e-coli.

8 CHAIRMAN HERRMANN: That's - that's an incorrect  
9 number. It is two thirty-six.

10 MR. SCHROEDER: Right. The - the - I'm referring to  
11 the comments that were made by EPA the last  
12 Commission meeting where they --

13 CHAIRMAN HERRMANN: Okay, yes, you're correct.

14 MR. SCHROEDER: stressed what the criteria should  
15 be. And also, they reflected two hundred six in  
16 their letter - comment letter to us that was  
17 received during the public comment period. That  
18 level reflects - and according to them, the result  
19 of what they call a peer review of their previous  
20 guidance that was published back in 1996 for  
21 bacteria criteria. Basically what they did is they  
22 subjected their own criteria to peer review of  
23 scientists and specialists and asked them the  
24 question, "Does - does the criteria - the guidance

14

1 and the science that's - the guidance is based on  
2 provide adequate justification for extrapolating?"  
3 In other words, being able to go beyond what the  
4 precise measurements were during the studies into

5 setting standards on waters of lesser use or less  
6 frequent use. And their science came back saying  
7 that that guidance doesn't give enough information -  
8 that the data does not sufficiently support  
9 establishment of a standard of five hundred  
10 forty-eight colonies per one hundred milliliters of  
11 e-coli on whole body contact recreational uses. But  
12 the science does support the use of two hundred six,  
13 which, reflects and according to them, a risk factor  
14 of one percent or ten illnesses per one thousand  
15 swimmers. In our response to EPA, we indicated to  
16 them that - well, first of all, this information  
17 came to us fairly late in the rulemaking process.  
18 It was not a discussion that took place during the  
19 development of the regulatory impact report. We did  
20 not have time to discuss with our stakeholders the  
21 potential impact of changing this standard -  
22 lowering the standard from five forty-eight to  
23 two hundred six. The second thing is that the science  
24 that - that was evaluated does open the possibility

15

1 that another standard would be acceptable above two  
2 hundred six. It just doesn't have enough data -  
3 enough information to be able to support that. And  
4 we would like to have the opportunity to further  
5 dialogue with our stakeholders and with EPA on the

6 possibility of being able to establish a standard  
7 other than two hundred six or if the science wouldn't  
8 support that, that we've had time to discuss with  
9 our stakeholders what the impact of establishing  
10 that standard at two hundred six would be. So our  
11 understanding with latest discussions with EPA is  
12 that they're willing to give us that opportunity.  
13 To have further dialogue on this issue. They may  
14 not be able to accept five forty-eight at this point  
15 in time, but have recognized the need to visit on  
16 this issue further. So they've asked us for a  
17 letter of commitment, if you will, that states that  
18 we are willing to do that as part of the next  
19 rulemaking process on our water quality standards.  
20 And so with the letter to EPA stating that we're  
21 willing to commit to further dialogue - further  
22 discussion on this issue and come back at our next  
23 water quality standards revisions and present  
24 something based on science data that can support

16

1 either two hundred six or a higher standard, then I think  
2 we can make it through this rulemaking without any  
3 strong objection, at least from EPA. Is there any  
4 --  
5 CHAIRMAN HERRMANN: Excuse me, Phil, has Mr. Alderman



6 given a copy of my - been given a copy of my  
7 response letter?

8 MR. SCHROEDER: I don't believe so.

9 CHAIRMAN HERRMANN: I did not send it until I got  
10 guidance from the Commission and I think that might  
11 be something that we may want to consider. That  
12 peer review study didn't argue with the numerical  
13 value. It argued with the extrapolation method used  
14 to get to the 1.4 or the fourteen illnesses per one  
15 thousand, which is what we used. It furthers says  
16 that it is - that document is provided - provided  
17 for guidance to the states and that the states  
18 should assess their own risk factors, but EPA does  
19 not - it is not mandatory from the EPA's standpoint.  
20 That's what the document says. And I think that  
21 should enter the following discussions.

22 MR. SCHROEDER: I think that those points are some  
23 of the points that we would make that allows us to  
24 enter into further discussions prior to trying to

17

1 establish a standard at two hundred six or two  
2 thirty six. It - I think that what you've just  
3 indicated is - is the room that we have to base  
4 those further discussions on. We'd like to reflect  
5 on not only your letter that you've written, but  
6 also the comments that EPA --

7 CHAIRMAN HERRMANN: What the Staff's --  
8 MR. SCHROEDER: as well as the comments that our  
9 stakeholders are - are going to be making on this  
10 issue as well. Are there any other comments on the  
11 bacteria standards before I move on to the next  
12 topic? Okay. Well, if you find in Item Fourteen of  
13 that same document - it should be on Page Eighteen  
14 of Thirty-seven dealing with metals criteria. We  
15 have received substantial comments on the fact that  
16 the metals criteria that we had proposed was  
17 somewhat stringent. Perhaps too stringent for  
18 certain regions of the state were certain sensitive  
19 species that were used in the establishment of the  
20 criteria don't exist. And while we understand that  
21 argument - we understand the comments made, we're in  
22 a position of being - it's a very difficult position  
23 of making any changes at this point in time. EPA  
24 has asked us to develop metals criteria as part of

18

1 their demands of their earlier September 8th, 2000  
2 letter, and so we're bound to - to present to them  
3 in this rulemaking some metals criteria. And what  
4 we had visited in order to do that is the guidance  
5 that EPA presented to us. And what came of that -  
6 visiting that guidance since we didn't have our own

7 science on effects of metals to various species in  
8 the State of Missouri, was a state-wide standard and  
9 many of the comments we had received during the  
10 public comment said that establishing a state-wide  
11 standard like that doesn't consider the various  
12 different types of species and sensitivities of  
13 those species exist within certain regions of the  
14 state. In other words, the - the discussion on  
15 trout was prevalent in many of the comments made and  
16 trout don't exist in the northern regions of the  
17 state, but obviously do in many of the streams in  
18 the southern region. So, a lot of the requests was  
19 made to whether or not we should look more into  
20 defining metals criteria based on the more types of  
21 the ecological or biological communities that exist  
22 within our streams. And I think there's a lot of  
23 merit in those comments, it's just that we haven't  
24 had the time to be able to develop the information

19

1 and the data to support an alternative rule that  
2 would be more regional based. So, I wanted to bring  
3 that up because you may continue to hear from our  
4 stakeholders the need to move in that direction and  
5 from the Staff's standpoint, we believe that  
6 movement in that direction towards regionalized  
7 metals criteria makes sense and we'd like to come

8 back again at our next water quality standards  
9 revision request and visit with you more on that  
10 issue. But at this point in time, we really have  
11 nothing more to offer to the Clean Water Commission  
12 because we've not been able to study that issue in  
13 any further depth.

14 CHAIRMAN HERRMANN: I have a difficulty with all of  
15 the metals. Iron and manganese are not toxic to the  
16 fish life. Iron and manganese are included in the  
17 water quality standards for drinking water only for  
18 taste of - taste and odor. And coincidentally, the  
19 limits used for iron and manganese are exactly the  
20 same as they are for drinking water supplies. And I  
21 question the inclusion of those two metals  
22 specifically.

23 MR. SCHROEDER: Again, it goes back to being able to  
24 find the guidance or the science to support an

20

1 alternative criteria and we've not been able to find  
2 that yet with any sciences that exists out there.  
3 But, again, you pointed to another issue that I  
4 think we need to continue to work toward finding  
5 that science and gathering the data and present  
6 something back.

7 But, we've not been presented any science at this

8 point, nor have we been able to find any that  
9 support an alternative standard. But we do  
10 understand that concern.

11 CHAIRMAN HERRMANN: But it's an ongoing discussion  
12 and study as to the inclusion of metals and the  
13 limits of metals stipulated.

14 MR. SCHROEDER: Right.

15 COMMISSIONER PERRY: And Phil? Can you hear me?

16 MR. SCHROEDER: Yes.

17 COMMISSIONER PERRY: Along those lines, there was a  
18 change in those drinking water standards from  
19 dissolved metals to total recoverable, but the  
20 values didn't change. Am I correct?

21 MR. SCHROEDER: I may have to turn to Staff to ask  
22 them if they could clarify that issue. I'm not  
23 aware of that.

24 STACIA BAX: For drinking water supply

21

1 metals, the method did change, but the numbers stay  
2 the same and that's based on EPA criteria. Their  
3 numbers are that - that we have in there, but  
4 they're based on total recoverable, not dissolved.

5 CHAIRMAN HERRMANN: But the results are the tests are  
6 considerably different. The magnitude of several  
7 ordered between dissolved and total recoverable. I  
8 don't see how the numbers could stay the same if

9     you're changing the definition.

10    MS. BAX:   The recommendation from EPA

11    is that we have those numbers that match their

12    criteria based on whatever methods they approved for

13    those numbers and that's what we have done.   We

14    could possibly explore this issue further.

15    CHAIRMAN HERRMANN:   I would - I would suggest that

16    that would be an ongoing study of dispute from a

17    scientific standpoint that you could use to dissolve

18    metals, recoverable as to rather than recoverable

19    metals.   Because the test results will show an order

20    of quite a few magnitude and difference between the

21    two criteria.

22    MR. SCHROEDER:   So do I understand the Commission's

23    willing to allow us to take that issue into the next

24    rulemaking process and try to resolve --

22

1    CHAIRMAN HERRMANN:   Along with these others item of

2    question or discussion.

3    MR. SCHROEDER:   Alright.   Thank you.

4    CHAIRMAN HERRMANN:   At least that's my opinion, I'm

5    sorry.   I don't want to speak for the entire

6    Commission.

7    COMMISSIONER HAUSER:   I'm going to eventually propose

8    an amendment --

9 CHAIRMAN HERRMANN: Okay.

10 MR. SCHRODER: Any other comments on the metals

11 before I move on to the next topic? I'd like to

12 move on then to Item Fifteen in the packet. It

13 should appear in Page Nineteen of Thirty-seven of -

14 of the final order of rulemaking. This deals with

15 the criteria for outstanding national resource

16 waters. We had made some changes in that standard

17 to reflect what we believe is - is more consistent

18 application of anti-degradation rule in another

19 portion of the water quality standards. And that

20 raised a lot of questions. Received a number of

21 comments that indicated concern with respect to

22 potential for opening up some degradation of the

23 outstanding national resource waters. That was

24 certainly not our intention. We continue to believe

23

1 strongly that the outstanding national resource

2 waters should be protected as required by the

3 anti-degradation rule such that no lowering of the

4 water quality would occur whatsoever with the

5 outstanding national resource waters. The way we

6 had written it though would have allowed some

7 possibility for businesses to establish and

8 discharge within the watersheds of these waters and

9 that was what raised a great deal of concern with

10 some of the commenters. Because we are moving into a  
11 phase of developing anti-degradation implementation  
12 procedures, in fact, we have committed to EPA that  
13 we would have that process done by April 30th of  
14 2007, hopefully even sooner than that. What we'd  
15 like to do is carry those discussions into that  
16 process. Into that work - work group, if you will.  
17 And what we've proposed in terms of final order of  
18 rulemaking goes back and simply strips all of what  
19 we had proposed down to - only what was essential to  
20 meeting EPA's demands in their September 8th, 2000,  
21 letter and that is that we remove any reference to  
22 standard effluent limits for POTW's and remove any  
23 potential language that would allow special  
24 exemptions for mine dewatering water within the

24

1 watersheds of the outstanding national resource  
2 waters. So that's what we've done. We've basically  
3 gone back, restored all of the language of the  
4 current rule and took out the reference to effluent  
5 limitations to POTW's and mine dewatering water and  
6 that's it. And we're going to reserve any other  
7 discussion about the anti-degradation implementation  
8 of the anti-degradation rule on these areas, as well  
9 as all across the state and all waters of the State



10 during the development of the anti-degradation  
11 implementation procedure, which will be coming back  
12 to you some time probably within the next year or  
13 so. But certainly be decided upon before April 30th  
14 of 2007. Is there any discussion you'd like to have  
15 on the outstanding national resource waters and that  
16 rule? Okay. Well, that concludes my comments on  
17 the water quality standards. Again, there were a  
18 number of other revisions and we'll get back to  
19 those in a minute when I talk about those  
20 specifically in the - the changes. I want to move  
21 on to the effluent regulations then. There's three  
22 parts of the effluent rule that I wanted to speak  
23 about. One being the standard - the Schedule of  
24 Compliance or the Implementation Schedule that we

25

1 had proposed in the rule. And I'm going to let Ed  
2 speak to that in a second here. The other two is  
3 the wet weather suspension or high flow exemption  
4 that we had proposed in the effluent regulation.  
5 And then some additional changes affecting special  
6 streams or the outstanding national or state  
7 resource waters in the effluent regulations. Let me  
8 start with discussing the wet weather suspension or  
9 the high flow exemption. That should appear on Page  
10 Five of your copy of the final order of rulemaking.

11 We hadn't received a great deal of comments on this,  
12 but we did receive indication from EPA that they  
13 would not expect the original rule the way it was  
14 drafted that we - that it wasn't clear enough.  
15 There was some ambiguity with respect to how the  
16 language was drafted and so we had some discussions  
17 at length with them about this particular issue and  
18 we were, of course, very concerned about reserving  
19 the ability to exempt streams or discharges from  
20 bacteria standards during wet weather events. So we  
21 wanted to have something in the rule to be able to  
22 keep that open as a - as a - as an option. And what  
23 we've come back with, hopefully, is something that -  
24 that we'll address - what we consider to be the

26

1 major elements of what must be in a high flow  
2 exemption in our discussions with EPA. The first is  
3 that any time that you talk about uses and the  
4 protection of uses or the removal of a standard that  
5 would be necessary to protect a use, a  
6 use attainability analysis comes into play. That in  
7 order to say that you're going to remove criteria,  
8 then first you have to say that the use to which  
9 that criteria is meant to protect doesn't exist at  
10 that point in time. So what we've developed is in a

11 first portion of the rule is the process by which a  
12 use attainability analysis would have to be conducted  
13 to be able to demonstrate what - at what point  
14 during a wet weather period, the uses that were  
15 meant to be protected by bacterial standards are no  
16 longer occurring. In other words, they are absent.  
17 We figured that there's a number of cases out there  
18 where streams become swollen with rainwater or their  
19 velocities get to a certain - certain point or they  
20 begin - or their conditions change dramatically  
21 during wet weather events that the uses applied to  
22 those waters no longer occur. But that would have  
23 to be demonstrated through a use attainability  
24 analysis. So the first portion of the rule that

27

1 we're proposing back to you says a use attainability  
2 analysis would have to be conducted as the first  
3 step toward a high flow exemption. The second part  
4 of the presentation by anybody who wants an  
5 exemption from bacterial standards during wet  
6 weather periods would have to be the showing of  
7 exact time at which that use disappears and the  
8 exact date in which that use would reappear. In  
9 other words, following that wet weather period.  
10 Somebody - and there's a lot of different ways that  
11 that could be characterized or quantified. I

12 mentioned a few. In other words, it could be  
13 quantified by the fact that this stream has a  
14 certain velocity. The velocity is so fast that the  
15 uses of swimming is essentially impossible without  
16 putting yourself at grave danger or potential harm.  
17 Or that at the bank - bank-full condition removes  
18 the use. Or that a certain level within the stream  
19 or condition with the stream during high flow simply  
20 doesn't lend that stream to being usable for whole  
21 body contact recreation or for even secondary  
22 contact recreation. But the point of which that  
23 condition starts and when it stops has to be well  
24 defined and that's something that EPA has stressed

28

1 many times to us during our discussions that in  
2 order for you to be able to offer an exemption, you  
3 have to have those two points in time well defined.  
4 So we didn't say exactly when those would be in the  
5 rule because it would vary from site to site. Three  
6 sites - we put in here the need to establish that  
7 before the high flow exemption would be granted.  
8 The third point - very important that EPA raised  
9 with this is the fact it has to be public  
10 participation involved in these decisions. And also  
11 they have asked us to change the rule the way it's

12 proposed in the final order of rulemaking to  
13 specifically state that it must have EPA approval  
14 before it becomes effective. So we'd like to  
15 propose to you to adopt the language the final order  
16 of rulemaking the way we've presented it to you with  
17 those three essential elements contained in there  
18 now with the added provision that we add the phrase  
19 that EPA approval is necessary before the exemption  
20 becomes effective. Are there any questions or do  
21 you want to have any discussion on that?  
22 CHAIRMAN HERRMANN: Only that I understand from our  
23 previous discussions that the high flow stakeholders  
24 group is still an active, ongoing discussion group

29

1 and will continue in developing of these eventual  
2 UAA's or standards. Site specific, correct?  
3 MR. SCHROEDER: Yes, very - yes, thank you for  
4 making that comment because - I should have added  
5 that work group - once we work through the combined  
6 sewer overflow issue and present to the Commission a  
7 proposed rule on that, we'd like to begin looking at  
8 the issue of other wet weather standards and how  
9 they apply and I would envision that this group  
10 would be willing to discuss with Staff - coming back  
11 and talking to the Commission about incorporating  
12 some aspects of the use attainability analysis protocol

13 that would address this issue of when do you exempt  
14 during high flows from bacterial standards. So, we  
15 envision that we would be able to come back with you  
16 with more detail on that issue once the wet weather  
17 work group has been able to study it with us.  
18 CHAIRMAN HERRMANN: Okay.  
19 MR. SCHROEDER: Are there any other discussions on  
20 wet weather exemptions? And under Item Ten --  
21 COMMISSIONER HARDECKE: Phil?  
22 MR. SCHROEDER: Yes?  
23 COMMISSIONER HARDECKE: On the EPA approval, does that  
24 mean they would need to approve the UAA or do they

30

1 need to approve each time it's exempted?  
2 MR. SCHROEDER: They would want approval on when the  
3 exemption would occur.  
4 COMMISSIONER HARDECKE: So the structure would have  
5 been the UAA, right?  
6 MR. SCHROEDER: It would - the exemption that we  
7 would request would be based on a UAA, but would  
8 also be based on stakeholder discussion and our  
9 public participation as well. We'd - we'd have to  
10 show to the EPA that all three of those elements  
11 that I've talked about have been satisfied in our  
12 development of a wet weather exemption. In other

13 words, the rule, if you adopt it the way it's  
14 written, that those three elements have been  
15 satisfied and then we submit it to EPA, get their  
16 approval, and then it becomes effective.  
17 COMMISSIONER HARDECKE: Okay.  
18 MR. SCHROEDER: And then once it's effective, then  
19 we can begin writing permits in accordance with that  
20 high flow exemption. I'd like to move then to Item  
21 Number Ten. That should be on Page Seven of  
22 Fourteen. Talking about effluent limitations to  
23 special streams or outstanding resource waters.  
24 Again - and this portion of the effluent

31

1 regulations, we referenced the effluent limitations  
2 on POTW's and the potential for exemptions to mine  
3 dewatering water. So, again, we did the same thing  
4 here in effluent regulations that we did in the  
5 water quality standards and removed any reference to  
6 those standard effluent limitations or any potential  
7 exemptions from mine dewatering water. Is there any  
8 discussion you'd like to have on that proposed  
9 change? If not, I'd like to turn the podium over to  
10 Ed Galbraith if - if I could to discuss the schedule of  
11 compliance and some recent discussions we've had on  
12 that issue.  
13 MR. GALBRAITH: Thank you, Phil. As you recall at

14 the last Commission meeting, I proposed language for  
15 the Commission's consideration to provide a safe  
16 harbor in the implementation schedule for whole body  
17 contact - I mean for disinfection for permits,  
18 renewals and modifications that are backlogged. And  
19 based on the Commission's generally favorable  
20 response, I put that language in the final order of  
21 rulemaking; however, we've had some last minute  
22 discussions with both our legal staff, as well as  
23 EPA and stakeholders on this and after much  
24 discussion, it was universally agreed - decided that

32

1 some modification was - was required. So what Phil  
2 just passed out is a - is a substitute language for  
3 Section 9H in - in the effluent rule. Basically  
4 what it does is give - extend the compliance  
5 schedule for all permits and renewals and  
6 modifications issued after the effective date of the  
7 rule. It moves that from three to five years, but  
8 then to ensure that we don't have a sort of a five  
9 plus five situation for somebody, you know, for  
10 somebody who gets their permit the last day of  
11 December, they would get a five plus five, which I  
12 think was well beyond - you know, ten years was well  
13 beyond what anybody contemplated in the original



14 order of rulemaking. Therefore, there is sort of a  
15 sunset date that says that by December 31st, 2013,  
16 which is eight years out, all permits shall ensure  
17 compliance with effluent limits to protect whole  
18 body contact and secondary contact. Also, the  
19 provision doesn't apply to any new construction  
20 applications. Anything that comes in the door after  
21 December 31st, you know, for major upgrade, major  
22 expansion or new construction, they have to - when  
23 they get their permit, they have to comply  
24 immediately with - with effluent limits to protect

33

1 their appropriate bacterial standards. So, I offer  
2 this to you for your consideration and ask that when  
3 it comes to - we vote on this rule, that you  
4 consider adopting this - this language for Section  
5 9H.

6 COMMISSIONER PERRY: I just have one little  
7 question. This is scheduled for protection of whole  
8 body contact. Does it really apply to secondary  
9 contact?

10 MR. GALBRAITH: Yes, and it was originally conceived  
11 in that - because it's - because there are - and the  
12 rule does have some streams already designated for  
13 SCR so, you know, if you have a permit, you have to  
14 protect that use as well. Any other questions?

15 Thank you.

16 CHAIRMAN HERRMANN: Yeah - excuse me, Ed. I hesitate  
17 for an engineer to offer legal opinions, but lawyers  
18 are never hesitant to offer engineering opinions so  
19 I feel safe. Your Paragraph Two says, "Not  
20 withstanding the provisions of 9H1," which is the  
21 provision you're granting time for doing a UAA  
22 either to prove you're not the cause of the  
23 non-compliance of the stream or that you have other  
24 mitigating factors, which does not require

34

1 disinfection or other - other means. That's not  
2 stipulated in Paragraph Two. You're saying  
3 notwithstanding Paragraph 9H1, you will comply with  
4 the standards by December 31st, 2013.

5 MR. GALBRAITH: I'm not sure I understand your  
6 point.

7 CHAIRMAN HERRMANN: My point is where's the - where's  
8 the provision for not --

9 MR. GALBRAITH: Well, I think it's implied in saying  
10 - stating that you have a compliance schedule that  
11 provides up to - to - to three to five years to do  
12 one of the following actions, which protect whole  
13 body contact and secondary contact recreation I  
14 think as implied in the - in the title of the

15 subsection, Implementation Schedule for Protection  
16 of Whole Body Contact, and so forth.

17 CHAIRMAN HERRMANN: My - my point is it says,  
18 "Notwithstanding the provisions of 9H1." In other  
19 words, just eliminate all the considerations of 9H1  
20 and - and do what says 9H2.

21 MR. GALBRAITH: That's - that's - I believe that was  
22 my intent to - to sort of put a final date, you know,  
23 by this date, everybody's got to comply no matter  
24 what. Maybe I'm not understanding your --

35

1 CHAIRMAN HERRMANN: Unless you do a UAA --

2 MR. GALBRAITH: Right. All the - all the - all the  
3 - I see what - okay. Well --

4 CHAIRMAN HERRMANN: I may be wordsmithing out of my  
5 jurisdiction so Aimee will clarify it, I'm sure.

6 MS. DAVENPORT: Good morning, Chairman Herrmann,  
7 members of the Commission. I'm Aimee Davenport and I  
8 work with Ed and staff legal counsel for the  
9 Department of - or Division of Environmental Quality  
10 and I think I understand where you're coming from  
11 and, Ed, just to clarify, I think Chairman Herrmann  
12 is saying that we - if a use attainability analysis or  
13 a study to show that disinfection isn't required in  
14 the stream, is performed, then the applicant may not  
15 be required to meet those effluent limitations for

16 whole body contact. So I think the quick fix is  
17 just to repeat the language. Maybe leave the same  
18 language in there and put a phrase on the end that  
19 says unless a use attainability analysis has been  
20 performed --  
21 CHAIRMAN HERRMANN: Yes, something - something which  
22 allows for considerations of 9H1.  
23 MS. DAVENPORT: Right. So I think we can do that  
24 and I just wanted to let you know that we'll - we'll

36

1 clarify that if that's the Commission's vote.  
2 CHAIRMAN HERRMANN: Okay, we don't have - that will  
3 be a Staff rewrite to do that with Aimee's guidance.  
4 MS. DAVENPORT: Sure.  
5 CHAIRMAN HERRMANN: Thank you, Aimee.  
6 MS. DAVENPORT: Thank you.  
7 MR. SCHROEDER: Maybe a perfect segue into my last  
8 portion of my presentation that is the language  
9 itself. I'd just like to step through that with you  
10 in both the effluent regulations and water quality  
11 standards so that it really firms up in your mind  
12 exactly what we're asking - asking you to do. So if  
13 you'll go into the Effluent Regulations toward the  
14 very back of your document, it should start on Page  
15 Ten of Fourteen of the final order of rulemaking.

16 The language - actual language of the final order  
17 begins. The first change that you'll see there is  
18 that because of recent name changes within the  
19 Department of Natural Resources, we're removing any  
20 reference to the Geologic Survey and Reference  
21 Assessment Division and making reference simply to  
22 the Missouri Department of Natural Resources so that  
23 we can correctly reflect on the agency required to  
24 make those determinations on losing streams.

37

1 END OF TAPE ONE, SIDE A  
2 BEGINNING OF TAPE ONE, SIDE B  
3 MR. SCHROEDER: and removing only the reference now  
4 of the current rule to effluent limitations  
5 forwarded for POTW's and any reference to mine  
6 dewatering water. So all of the language that you  
7 see in bold there is - comes from our current rule.  
8 It's just being re-asserted during this final order  
9 of rulemaking process. So it's not new language,  
10 it's existing language that's going back into the  
11 rule in this process. Now, the current rule, if you  
12 want to look specifically, has Sections C and D,  
13 which have been removed from this one. Those two  
14 sections, as I've said, refer to the effluent  
15 limitations on POTW's and - and so we've removed  
16 those sections in this final order of rulemaking.

17 Under Section Seven that appears on Page Twelve of  
18 Fourteen, again, it's the reference to the Missouri  
19 Department of Natural Resources as opposed to the  
20 Geological Survey and Resource Assessment Division.  
21 And under Section Nine of General Conditions, this  
22 is the portion where Ed had just described about  
23 making changes on the Schedule of Compliance so we'd  
24 like to offer up what Ed had just provided you with

38

1 the added revision that was proposed by Aimee  
2 Davenport. So, if you'd like to discuss some  
3 specific language about what the Staff should write  
4 into the final order of rulemaking for the Schedule  
5 of Compliance, this would probably be a good time to  
6 do that. Perhaps you'd want Aimee to make another  
7 recommendation to the Commission on the language?

8 MR. GALBRAITH: I think we have some language here.

9 CHAIRMAN HERRMANN: Ed has a suggestion that I think  
10 would work through. Aimee would be sufficient to  
11 satisfy the comment.

12 MR. SCHROEDER: Would we want to present that to you  
13 at this moment and then - so that --

14 MR. GALBRAITH: Well, I think we may be pressed.  
15 When we get to that motion, we can just read the  
16 additional language and --

17 MR. SCHROEDER: Okay. Moving on through the  
18 effluent regulations then, the last part is under  
19 Item I. It talks about temporary suspension of  
20 accountability for bacteria standards during wet  
21 weather. This is the portion of the rule that  
22 contains the three elements that I talked about.  
23 The need for use attainability analysis, the need to  
24 define that wet weather period that exemption would

39

1 apply to and the need for public participation,  
2 including EPA approval of an exemption prior to it  
3 becoming effective. So, on the very last page of  
4 the final order of rulemaking under Item Three  
5 there, that's where some reference to EPA approval  
6 is needed. And, again, if you'd like to hold off  
7 and exact language to that when a vote is made then  
8 we can do that.

9 COMMISSIONER HARDECKE: You said in Number Three was  
10 where it referred to EPA approval? Was that on this  
11 last page?

12 MR. SCHROEDER: Yes. Currently reads, "The  
13 suspension shall be subject to public review and  
14 comment before becoming effective and shall be  
15 contained as condition in a discharge permit or  
16 other written document developed through public  
17 participation." Somewhere in that sentence, we need

18 to have the requirement that EPA must approve the  
19 high flow exemption before it becomes effective. In  
20 order to satisfy what comments EPA has made to us  
21 with regard to this special - this specific rule.  
22 COMMISSIONER PERRY: Do you have suggested wording  
23 for that?  
24 MR. SCHROEDER: I could probably think of something

40

1 right quick, if you want me too. It could - we  
2 could read, "The suspension shall be subject to  
3 public review and EPA approval." "Public review and  
4 comment and EPA approval before becoming effective."  
5 That'd be an easy fix.  
6 CHAIRMAN HERRMANN: As an add-on to Paragraph Three?  
7 MR. SCHROEDER: Yes.  
8 CHAIRMAN HERRMANN: Yes.  
9 MR. SCHROEDER: "The suspension shall be subject to  
10 public review and comment and EPA approval before  
11 becoming effective."  
12 CHAIRMAN HERRMANN: But leave the - leave the  
13 approval of the Clean Water Commission in there as a  
14 primary.  
15 MR. SCHROEDER: Would Commission want for Staff to  
16 come to them to present high flow exemption and --  
17 CHAIRMAN HERRMANN: They would have to have a UAA



18 anyhow. I think that would become - that would come  
19 before the Commission.

20 MR. SCHROEDER: Right.

21 CHAIRMAN HERRMANN: The Commission would approve it  
22 and then seek EPA's approval of our approval.

23 MR. SCHROEDER: Yeah, our current UAA protocol that  
24 was approved by the Commission has the - as the last

41

1 step - or as a step within their presentation to the  
2 Commission of the UAA prior to moving into a --

3 CHAIRMAN HERRMANN: There is a distinction. The  
4 present protocol is a recreational UAA protocol and  
5 this is not recreational. This is high flow.

6 MR. SCHROEDER: Yeah, the high flow exemption is for  
7 bacterial standards, which only apply to  
8 recreational uses so there is some connection there  
9 between the UAA protocol for recreation and this  
10 suspension. So we could add here, if you'd like as  
11 another step that the suspension shall be subject to  
12 public review and comment, EPA approval - EPA and  
13 the Clean Water Commission approval. Is that what  
14 you're --

15 CHAIRMAN HERRMANN: That's suggestive.

16 MR. SCHROEDER: Suggesting?

17 CHAIRMAN HERRMANN: Suggestion, yeah. In other  
18 words, that would be the normal progression that the

19 public comment would proceed to presentation to the  
20 Commission. The Commission would accept it and then  
21 we would present our approval or denial to EPA for  
22 their consideration.

23 MR. SCHROEDER: Okay. So it'll read, "The  
24 suspension shall be subject to public review and

42

1 comment, EPA and Clean Water Commission approval."

2 MR. GALBRAITH: Let's - let's reverse Clean Water  
3 Commission on the EPA --

4 MR. SCHROEDER: Okay, "The Clean Water Commission  
5 and EPA approval."

6 CHAIRMAN HERRMANN: Right.

7 MR. SCHROEDER: Okay. I'd like to move then through  
8 the changes in the water quality standards. Those  
9 begin on Page Twenty-six of Thirty-seven of the  
10 final order of rulemaking. And the first change  
11 appears under Definitions 1C on beneficial uses.  
12 We've added the word "beneficial" or "designated"  
13 uses because the - the word "designated use" fits  
14 more with the context of our rulemaking because the  
15 - the uses that are contained within the rule are  
16 designated uses. We've added the language, "Those  
17 uses specified in," - as - as the definition of  
18 beneficial and designated uses. "Those uses

19 specified in Paragraphs One through Fifteen of this  
20 Subsection for each water body segment whether or  
21 not they are attained." And this is language which  
22 comes right from EPA guidance or EPA's definition of  
23 a beneficial or a designated use. In other words,  
24 you may have a designated use to a water body

43

1 without any analysis of whether or not the use was  
2 actually attained. And then we go on through with  
3 adding the words, "or designated," whenever we talk  
4 about beneficial uses. Moving to Page Twenty-seven,  
5 under the definition of whole body contact  
6 recreation, the last sentence starting on Page  
7 Twenty-six, which rolls into Page Twenty-seven,  
8 starts, "All waters in Tables G and H of this rule  
9 are presumed to support whole body contact  
10 recreation until a use attainability analysis has shown  
11 that the use is unattainable." We had some comments  
12 with respect that we needed to - to make sure that  
13 the whole body contact recreational uses or the  
14 presumed use - in other words, if they exist or they  
15 are required for designation in water quality  
16 standards until presumed - or it's shown  
17 unattainable through use attainability analysis. And  
18 then we added some language further in the next  
19 sentence that says, "The use designation for whole

20 body contact recreation may be removed or modified  
21 through a use attainability analysis for only those  
22 waters where whole body contact is not an existing  
23 use." And, again, this comes from EPA guidance that  
24 waters within an existing whole body contact

44

1 recreational use or any other use cannot be removed  
2 if it's determined to be an existing use. Any  
3 discussion on that portion? I'd like to move to the  
4 bottom of Page Twenty-seven, where we added the  
5 phrase under the definition of early life stages,  
6 we've added early life stages of fish to be clear  
7 that the guidance that we adopted here for  
8 determining early life stages are of fish and not of  
9 all aquatic life organisms. Again, this comes from  
10 use of guidance from EPA, which is specific to fish,  
11 as opposed to all aquatic organisms. We've added a  
12 definition for existing uses, which reads, "Existing  
13 uses - those uses actually attained in the water  
14 body on or after November 28th of 1975, whether or  
15 not they are identified in the water quality  
16 standards." In other words, whether or not they are  
17 a designated use. And, this again, is language that  
18 comes out of EPA guidance for defining any existing  
19 use. That changes followed by a number of

20 renumberings required by some of the added  
21 definitions we just talked about. And then we also  
22 came across another reference to the Geological  
23 Survey and Resource Assessment Division, which was  
24 changed to the Missouri Department of Natural

45

1 Resources. We made a change in - in language under  
2 low flow conditions, where it reads, "Low flow  
3 conditions were used in this regulation in the  
4 context of mixing zones. Low flow conditions shall  
5 refer to the minimum amount of stream flow occurring  
6 immediately upstream of a waste water discharge and  
7 available - in whole or in part for," and we took  
8 out the words "dilution" or "simulation" and used  
9 the word "attenuation" of waste water - and then we  
10 took out the word "discharges" and used the word  
11 "pollutants," to try to describe in more detail of  
12 how low flow conditions are assessed. And then we  
13 had some more renumbering of the following  
14 paragraphs until we get down to another use that was  
15 defined in the rule on use attainability analysis and  
16 it was defined as a structured scientific assessment  
17 of the factors affecting the attainment of the use,  
18 which may include physical, chemical, biological and  
19 economic factors as described in 40 CFR 131.10 (G.  
20 Again, this is a definition that comes out of EPA

21 guidance. Following some more renumberings of some  
22 paragraphs, we made a change under Section Four on  
23 Page Thirty, where we took out the phrase on - where  
24 it reads under (C bacteria, "Protection of whole body

46

1 contact recreation is limited to classified waters  
2 designated for that use either of the following  
3 bacteria criteria shall apply until," and we took  
4 out the words, "A date three years from the  
5 effective date of this rule," and inserted,  
6 "December 31st, 2008." And - right above that, we  
7 took out a phrase under the specific criteria -  
8 where it reads, "Only waters designated for  
9 livestock and wildlife watering are considered to be  
10 longterm supplies and are subject to chronic  
11 toxicity requirements of the specific criteria." We  
12 took that out. It was considered to be incorrect.  
13 We took out reference to where we talk about  
14 bacteria criteria, where we've referenced to  
15 colonies where the standard is two hundred per one  
16 thousand - or one hundred milliliters. We took out  
17 the word "colonies" to be able to allow for full  
18 measurement of - of bacteria within the waters.  
19 Made - took one change - took out fecal chloroform  
20 reference and made reference to the e-coli, which is

21 a change we're trying to make. And I think -  
22 instead of going through all these, I'm getting the  
23 sense that probably - perhaps that you'd probably  
24 read through these and you don't need me to go

47

1 through these further for the sake of time. I want  
2 to go down to the outstanding national resource  
3 waters. And, again, explain to you that what we've done  
4 there and the water quality standards is removed any  
5 reference to POTW's and the effluent limitations for  
6 those and the mine dewatering water. Toward the end  
7 you'll find Table G - Table H, rather, where waters  
8 were removed from the whole body contact  
9 recreational use designation, where they were  
10 subject to UAA's that were presented to the  
11 Department prior to July 14th. Or you find under  
12 the column of Whole Body Contact Recreation - you'll  
13 find a - a bracketed "B." Those are the waters  
14 where the whole body contact recreational use is  
15 being recommended for removal based on the UAA's  
16 received by the Department. Where you find some  
17 changes in the legal descriptions or places where  
18 we've modified a segment of water to place the upper  
19 segment into a category of not having whole body  
20 contact recreation and found through the UAA that  
21 the lower segment of that water would qualify for

22 whole body contact recreation. Now, these removals  
23 that we have in here are only the ones - the hundred  
24 fifty-three that we've mentioned earlier that were

48

1 subject to UAA's. And what you have in your midst  
2 someplace, I guess, is a stack of comments on those  
3 UAA's received by a number of public members or  
4 citizens. And we did not make those changes in this  
5 rule of final order of rulemaking based on the  
6 comments that we'd received after the public comment  
7 period on the rule. But you do have that  
8 information in front of you in your packet. We've  
9 provided you a table, which separates out the  
10 comments in terms of whether or not they actually  
11 had some reason to disagree with the UAA and wanted  
12 us to return the whole body contact recreational use  
13 to that water or vice versa - remove the use where  
14 we may have recommended that it be retained. We  
15 don't have a recommendation for you on those, but  
16 certainly would be willing to answer any questions  
17 you would have about the comments that we had  
18 received on that and assist you in whatever way that  
19 we can for you to make a decision as to whether or  
20 not you think that the comments should - should  
21 result in a change to what we've proposed in the



22 final order of rulemaking.  
23 CHAIRMAN HERRMANN: If it's procedurally acceptable  
24 to Mr. Bryan, our legal advisor, I think we should

49

1 handle the rule exclusive of Table H as a  
2 consideration for a motion, since there is some  
3 likely changes, considerations, argumentation on  
4 Table H. I think we could handle that separately  
5 outside the rest of the rule. Is that --  
6 MR. BRYAN: That - that's fine.  
7 CHAIRMAN HERRMANN: Are there any amendments by the  
8 Commissioners that wish to be made other than Table  
9 H at this time?  
10 COMMISSIONER PERRY: Chairman Herrmann, are you  
11 saying in addition to those amendments that have  
12 already been proposed --  
13 CHAIRMAN HERRMANN: Outside of Staff recommendation,  
14 yes, and outside of the --  
15 COMMISSIONER PERRY: And outside of the one that you  
16 brought up?  
17 MR. BRYAN: I think, first, you may want a motion to  
18 adopt the order of rulemaking except with respect to  
19 Table H, second that motion, then amend the motion  
20 with changes that you have.  
21 COMMISSIONER PERRY: So moved.  
22 COMMISSIONER HAUSER: Second.

23 CHAIRMAN HERRMANN: Okay, moved and seconded. Please  
24 call for the vote, Marlene - or, I'm sorry, if there

50

1 is no objection? The Chair has privilege, I'm told,  
2 to accept it by acclamation, correct?

3 MR. BRYAN: That - that - what you can do is accept  
4 amendments by acclamation. If there is an  
5 objection, you'll need to vote on a specific  
6 amendment.

7 CHAIRMAN HERRMANN: Okay, but as far as the initial  
8 acceptance of the rule?

9 MR. BRYAN: That's right. We'll - we'll call this  
10 question later after the discussion on the --

11 CHAIRMAN HERRMANN: Okay, okay. Now, are there any  
12 amendments to the rule?

13 MR. GALBRAITH: Mr. Chairman - Phil, are you  
14 finished with your - have you finished your  
15 testimony?

16 MR. SCHROEDER: Yes.

17 MR. GALBRAITH: Okay, as - as concluding part of our  
18 testimony, if I can - if I may, Mr. Chairman, I - I  
19 think we're at a point where we have a rule that is  
20 substantially in compliance with - well, that a rule  
21 that we hope that EPA is substantially in agreement  
22 with; however, I don't want to speak for them so I

23 would ask, as part of our testimony, if the Chair  
24 could - if we could recognize Leo Alderman to sort

51

1 of cap off our testimony, as it were.  
2 CHAIRMAN HERRMANN: Very good. Mr. Alderman?  
3 MR. ALDERMAN: Thank you, Mr. Chairman, and  
4 Commissioners for another opportunity to speak  
5 before the Commission on the water quality rules.  
6 Because of the hard work and the attention to detail  
7 that Phil and the Staff have given to these rules  
8 that I can say - happily say that my comments are  
9 going to be extremely brief so - I, personally, in -  
10 in Region Seven and the Staff who have looked at  
11 this are extremely pleased with the - the proposed  
12 water quality rules and - with the modifications  
13 that we heard today. With the proposed effluent  
14 guidelines, with the modifications that we've heard  
15 and the modified compliance schedule and we support  
16 these proposals as - as they were present today with  
17 the modifications. And, again, I would like to  
18 congratulate Phil and his Staff and the Commission  
19 for all the hard work and - and again, the attention  
20 to - to - to detail because we've come a long way  
21 and - and I'm sure Phil - Phil and his Staff have -  
22 have felt like they've done a lot of work and done a  
23 great job, but I think the - the product was - was

24 well worth that hard work and - and, again, I'd like

52

1 to congratulate you all for - for where we are  
2 today, so, thank you. One thing I might mention -  
3 you're going to discuss it a little bit later, but,  
4 on the UAA's, I just kind of wanted to make a  
5 pointed clarification because I heard there might be  
6 some questions on this and I thought I'd bring it up  
7 now as you - if you get into any further discussions  
8 on them is that as EPA reviews the use attainability  
9 analysis when they're submitted to Region Seven,  
10 that we look at those a stand alone. Each UAA is a  
11 stand alone item. In other words, if we looked at a  
12 UAA or one or two or more UAA's, we would look at  
13 those as individuals that do not impact the other  
14 ones that were sent up - there's like a total of -  
15 did you say - how many, Phil? A hundred fifty? Is  
16 that what you said?

17 MR. SCHROEDER: Hundred fifty-three.

18 MR. ALDERMAN: A hundred fifty-three and those would  
19 be a hundred fifty-three individual - we'll be  
20 looking at those as individual UAA's and not as a  
21 group. So, in other words, if - if - if we looked  
22 at them and we did disagree with the use designation  
23 based on that UAA, it would be solely on that one

24 use designation. It wouldn't impact the others.

53

1 So, I just wanted to make that clear as you were  
2 going through the discussions later. Again, thank  
3 you for the time.

4 CHAIRMAN HERRMANN: Thank you, sir. Okay, we're  
5 ready for amendments to the rule.

6 COMMISSIONER HAUSER: I'd like to propose an  
7 amendment under Water Quality Standards 10 CSR  
8 20-7.031. We spoke of it earlier - manganese and  
9 iron (for specific criteria) and I can provide this  
10 to you in writing, Marlene. B 2.B Drinking Water  
11 Supply - total recoverable metals and add, "Except  
12 iron and manganese." And that gets to the  
13 discussion we had that iron and manganese aren't  
14 primary drinking water contaminants. And we - we  
15 shouldn't be treating the drinking water quality  
16 standards here.

17 MR. GALBRAITH: Paul, can I - I'm sorry. Can you  
18 tell me where you're at again?

19 COMMISSIONER HAUSER: Yeah, Parenthesis Four,  
20 specific criteria. B)2.B drinking water supply,  
21 total recovery metals.

22 MR. GALBRAITH: So we're - just to point a  
23 clarification where - where we're only dealing with  
24 the - the - the water quality standards rule - we're

1 taking those separately?

2 COMMISSIONER HAUSER: Yeah, that was my  
3 understanding. We were going to vote on amendments  
4 individually.

5 MR. GALBRAITH: Okay.

6 (Inaudible)

7 COMMISSIONER HAUSER: I was - I had it here in the  
8 summary, let's see. It's Chapter Seven. It's 10  
9 CSR 20-7.031. (Inaudible) 4B2? B?

10 COMMISSIONER PERRY: I think there's a problem in  
11 knowing that what we're looking at these proposed  
12 rules are only certain sections of something larger,  
13 and so the section numbers don't always flow. Now,  
14 we had some discussion, Chairman Herrmann, where you  
15 were saying that - that part that said dissolved  
16 metals should not be omitted. Did I misunderstand  
17 that?

18 CHAIRMAN HERRMANN: Should not be amended?

19 COMMISSIONER PERRY: Omitted.

20 CHAIRMAN HERRMANN: Omitted.

21 COMMISSIONER PERRY: We should use the word,  
22 "dissolved metals," for that correlates to the  
23 values.

24 CHAIRMAN HERRMANN: That's - I was talking about the

1 difference between recovered - total recoverable  
2 metals and dissolved metals.  
3 COMMISSIONER PERRY: Right.  
4 COMMISSIONER HAUSER: And --  
5 COMMISSIONER PERRY: And that's what we're talking  
6 about in this section right now.  
7 COMMISSIONER HAUSER: Removing iron and manganese  
8 will impact - Chairman Herrmann talked about the  
9 order of magnitude different in total recoverable  
10 metals versus dissolved metals and this will address  
11 that to some degree. The removal of iron and  
12 manganese.  
13 COMMISSIONER PERRY: And my question is are we  
14 required to make that change from dissolved metals  
15 to total recoverable metals?  
16 CHAIRMAN HERRMANN: That was further discussion with  
17 EPA, correct?  
18 COMMISSIONER PERRY: And that - that's --  
19 CHAIRMAN HERRMANN: That's to their requirements.  
20 COMMISSIONER PERRY: Okay, so then - but to edit it  
21 then to say, "total recoverable metals except iron  
22 and manganese." Is that the proposed amendment?  
23 COMMISSIONER HAUSER: Yes, that is a proposed  
24 amendment. The EPA can speak to it, but -

1 CHAIRMAN HERRMANN: Yeah, please.

2 MR. ALDERMAN: Yes, Chairman, just a - the  
3 clarifying of iron and manganese. That is part of  
4 the consent agreement and would be mandatory that be  
5 part of the standards and I don't know if you're at  
6 the dissolved metals yet, but I can have Bonnie talk  
7 about that a little bit more detail as the rationale  
8 as to why we're there. So, but on the iron and  
9 manganese, that is part of the consent agreement and  
10 would need to be in there and could cause EPA to  
11 have to promulgate that if - if it was missing.

12 COMMISSIONER HAUSER: Even though it's not - not a  
13 drinking water contaminate?

14 MR. ALDERMAN: Yes.

15 CHAIRMAN HERRMANN: And that - could that be backed  
16 up with sound science? My answer is no. I don't  
17 care what the lawyers said, what the court said and  
18 I don't remember that being a part of the consent  
19 agreement specifically saying iron and manganese  
20 because iron and manganese is not a contaminate.  
21 Iron and manganese is not a pollutant. Iron and  
22 manganese is only of concern in drinking water or  
23 taste and odor. It will stain your laundry, it'll  
24 stain your plumbing fixtures. If you make coffee,



1    tea or a whiskey highball out of - out of waters  
2    containing manganese, it'll turn them black. And  
3    that's the only deleterious effect. No matter how  
4    much iron you consume in your body - most people  
5    take pills for iron to enhance their diet and I  
6    don't know of many people dying from that. So that  
7    - I don't think iron and manganese can be defined as  
8    a pollutant. Iron and manganese are only - shall we  
9    call them obnoxious substances.

10   COMMISSIONER HAUSER: I agree with Chairman Herrmann.  
11

12   CHAIRMAN HERRMANN: Can you tell me in the consent  
13   decree, Bonnie, where the iron and manganese is  
14   specifically mentioned? Section IB - Dissolved  
15   Metals Criteria.

16        BONNIE LISCEK: Yeah, 5 - 5B is where it's  
17   stated that use of dissolved metals, criteria for  
18   drinking water, supply use. If you go into the  
19   September 2000 letter, it does specify both  
20   manganese and iron as being - that have to be  
21   considered as total recoverable and not dissolved.

22   CHAIRMAN HERRMANN: Who's September letter?

23   MS. LISCEK: EPA's September 2000 letter  
24   to MDNR where the item was disapproved.

1 MR. GALBRAITH: It was not part of the subsequent  
2 consent to create or assess --

3 CHAIRMAN HERRMANN: Not a part of the consent  
4 decree, that's correct.

5 MS. LISCEK: Everything that was in the  
6 consent decree references that statement.

7 MR. GALBRAITH: It wasn't stated, specifically, I  
8 guess that he was looking for the reference in the  
9 consent decree.

10 MS. LISCEK: Right, it just has the - that  
11 title that then references back to that September  
12 2000 letter.

13 CHAIRMAN HERRMANN: Then we can take exception with  
14 EPA's 2000 letter. That iron and manganese are not  
15 toxic. Iron and manganese are not a toxin. They  
16 are not a pollutant.

17 MS. LISCEK: I think that's - we'll have  
18 to make a determination on that.

19 COMMISSIONER PERRY: If it's not scientifically  
20 defensible, why are we basing this on - on what was  
21 written some place incorrectly?

22 MS. LISCEK: Well, that's what the whole  
23 consent decree and settlement agreement was based  
24 upon were those items in that letter so everything

1 references back to that previous letter and those  
2 disapprovals.

3 COMMISSIONER KELLY: You know, I think at this point  
4 we've taken a long, hard time to get to this point  
5 with the regulations. I don't think we  
6 need to be doing anything - anything that is going  
7 to risk getting these turned down by EPA. This is a  
8 fine point, but I don't think we need to be arguing.

9 MR. ALDERMAN: My question to the Commission is  
10 today, I mean this - as you stated, it is tied to  
11 the 2000 letter and my question to the Commission is  
12 is this something that you need to resolve today or  
13 get these rules promulgated and deal with this as  
14 another tri-annual review and then take a look? And  
15 we're doing what you - what - what - what you would  
16 suggest, Chairman, is taking a look at our original  
17 letter, 2000 letter - 2003 letter and looking at  
18 that to see whether or not the - the statements in  
19 there were - are questionable and - and are  
20 accurate. That's what we'd really be doing.

21 CHAIRMAN HERRMANN: Not about questionable and  
22 accurate, but as stated, is it scientifically  
23 defensible? And that, I think, is the principal  
24 criteria and it should be considered.

1 MR. ALDERMAN: And that's what I'm saying today I  
2 just - I - I don't feel that any of us here today  
3 can - can debate that letter and the science behind  
4 it, but at a - at another - another tri-annual  
5 review submittal and then discussion, that's  
6 something we that we can look at the science and -  
7 and talk about it and have a dialogue on it and see  
8 it further.

9 CHAIRMAN HERRMANN: I --

10 MR. ALDERMAN: That's just my suggestion to get - to  
11 get - to get - to get --

12 CHAIRMAN HERRMANN: Well, I think that was the tenor  
13 or our conversation earlier when Phil presented it  
14 and I made the objection to iron and manganese being  
15 in there initially was it would be considered for  
16 further study. And I don't think - I think there  
17 are enough questionable and concerned items in here  
18 that we can't wait for another tri-annual review. I  
19 think we got to go through a somewhat thorough  
20 review of a lot of these things before three years  
21 occurs.

22 COMMISSIONER HAUSER: So we can pull out iron and  
23 manganese now, approve the amendment, and then it be  
24 subject to discussion and review?

1 MR. GALBRAITH: I think what they're saying is that  
2 - that might jeopardize their approval come April  
3 2006.

4 COMMISSIONER PERRY: Is this - is this an all or  
5 nothing thing?

6 CHAIRMAN HERRMANN: I'm sorry, I didn't get the  
7 question, Kristin.

8 COMMISSIONER PERRY: My question was whether this is  
9 an all or nothing thing.

10 CHAIRMAN HERRMANN: Oh.

11 COMMISSIONER PERRY: This seems like a simple change  
12 that would make something scientifically accurate  
13 that will effect what people do because this rule  
14 goes into effect as soon as we hear back from EPA.

15 CHAIRMAN HERRMANN: Well, I think it comes under the  
16 same heading as total recoverable metals and  
17 dissolved metals. There's a very distinct difference  
18 between the two in quantity and in definition and I  
19 think if we're going to continue that discussion we  
20 should continue the discussion on iron and  
21 manganese, I suppose.

22 COMMISSIONER HAUSER: I agree. I withdraw my  
23 motion.

24 CHAIRMAN HERRMANN: Okay. Any other amendments?

1 COMMISSIONER HAUSER: Yes, under effluent  
2 regulations, 10 CSR 20.015, Fecal Choloform, and  
3 Marlene, I can give you these in writing, also, but  
4 parentheses 2B4 Fecal Choloform - all of these  
5 references changing average to geometric mean in  
6 Section 2B4, 3B3, 4B4 and 8B4. The summary that  
7 Phil handed out - it's - the reference to it's right  
8 at the first paragraph.

9 CHAIRMAN HERRMANN: 2B4.

10 COMMISSIONER HAUSER: Yeah. Okay, it's - let me  
11 slow down. 10 CSR 20-7.015, the effluent  
12 regulations parenthesis 2B4, starts out fecal  
13 choloform. Within that sentence change, strike  
14 "average" and change that to "geometric mean." And,  
15 basically, do the same thing everywhere that's  
16 referenced and the other references are in 3 -  
17 parenthesis 3B3, parenthesis 4B4 and parenthesis  
18 8B4. With the idea that the geometric mean is the  
19 proper scientific basis for - for these samples.

20 COMMISSIONER PERRY: Okay, is there any objection to  
21 that?

22 CHAIRMAN HERRMANN: We need it.

23 COMMISSIONER PERRY: We need a motion. Did you make  
24 a motion?

1 COMMISSIONER HAUSER: Yeah, I made the motion.  
2 There hasn't been a second.  
3 COMMISSIONER PERRY: I'll second it.  
4 CHAIRMAN HERRMANN: Okay. Discussion? Phil, you  
5 want to say something?  
6 MR. SCHROEDER: The - the current effluent  
7 limitation for bacteria is based on averages and  
8 we've issued a number of permits over the years with  
9 that. But, we've also, in this rulemaking, have  
10 proposed that we move to an e-coli standard using a  
11 geometric mean within three years. So your motion,  
12 basically, would make us go back and change a number  
13 of permits or issue permits differently for a period  
14 of, perhaps, three years, but after the three-year  
15 period's up, we're all going to be going to the  
16 e-coli anyway and a geometric means. So, I - I just  
17 wanted to make the comment, for your consideration,  
18 as to the amount of work it might entail over the  
19 next course of three years --  
20 CHAIRMAN HERRMANN: Wait a minute. Now, I'll - I'll  
21 aggravate our attorney advisor here and practice law  
22 again, plan engineer.  
23       There's such a thing as grandfathering.  
24 They're not going to have to go back and rewrite any

1 of these permits. These permits, as written, stand

2 on their present limits until a new permit is  
3 required or until they apply for a new permit,  
4 correct?

5 MR. BRYAN: That's true.

6 CHAIRMAN HERRMANN: We're not - you're not going to  
7 go back and rewrite any of these permits.

8 MR. SCHROEDER: Well, the way the rule's written any  
9 permits issued after that three-year transition  
10 period will have to have an e-coli standard based on  
11 geometric mean. Now, maybe --

12 CHAIRMAN HERRMANN: After three years.

13 MR. SCHROEDER: Right.

14 CHAIRMAN HERRMANN: Okay.

15 COMMISSIONER PERRY: But, does that not mean that  
16 any permit that you issue as soon as this rule  
17 becomes effective may still have some people using  
18 fecal choloform?

19 COMMISSIONER HAUSER: They use average.

20 COMMISSIONER PERRY: They you'd want them to have  
21 the geometric mean rather than still do the average.

22 MR. SCHROEDER: Wherever the rule prescribes that we  
23 issue it with an e-coli standard, it will have a  
24 geometric mean associated with it.

1 COMMISSIONER PERRY: Right.



2 MR. SCHROEDER: But --

3 COMMISSIONER PERRY: But what about - these people

4 still have three years to make the switch. Right?

5 MR. SCHROEDER: Right.

6 COMMISSIONER PERRY: So, aren't we going to issue

7 some permits in the next three years?

8 MR. SCHROEDER: Right. We will be issuing permits

9 within the next three years.

10 COMMISSIONER PERRY: And wouldn't we want those from

11 hence forward to reflect geometric mean rather than

12 monthly average?

13 MR. SCHROEDER: Okay. I mean, I understand the

14 comment, but we're going to have a number of permits

15 out there looking at --

16 COMMISSIONER PERRY: Right, they're under the old

17 rules.

18 MR. SCHROEDER: geometric mean and others with

19 averages --

20 COMMISSIONER PERRY: Those were permits under the

21 old rules and do I understand that those continue?

22 COMMISSIONER HAUSER: If this amendment were

23 approved, all future permits would use geometric

24 mean.

1 CHAIRMAN HERRMANN: Right. Any other discussion?

2 Is there dissenting opinion?

3 COMMISSIONER KELLY: Yeah, I'm - I'm dissenting. I  
4 don't see the reason for the change.  
5 CHAIRMAN HERRMANN: Okay, then we'll call for a  
6 vote. Please call for the vote, Marlene.  
7 MS. KIRCHNER: Commissioner Hauser?  
8 COMMISSIONER HAUSER: Yes.  
9 MS. KIRCHNER: Commissioner Kelly?  
10 COMMISSIONER KELLY: No.  
11 MS. KIRCHNER: Commissioner Perry?  
12 COMMISSIONER PERRY: Yes.  
13 MS. KIRCHNER: Commissioner Hardecke?  
14 COMMISSIONER HARDECKE: Yes.  
15 MS. KIRCHNER: Commissioner Easley?  
16 COMMISSIONER EASLEY: Yes.  
17 MS. KIRCHNER: Chairman Herrmann?  
18 CHAIRMAN HERRMANN: Yes. Motion passes.  
19 MR. GALBRAITH: Paul, do you mind restating the -  
20 the amendment so that we're clear?  
21 COMMISSIONER HAUSER: Yeah, under 10 CSR 20-7.015  
22 parenthesis 2B4 - well, in each of these areas  
23 changing "average" to "geometric mean" and that occurs  
24 under 2B4, also change "average" to "geometric mean"

67

1 under 3B3, and I can give these in writing to  
2 Marlene when we're finished. Under parenthesis 4B4,

3 change "average" to "geometric mean" and under  
4 parenthesis 8B4, change "average" to "geometric  
5 mean."  
6 MR. GALBRAITH: So it's basically all the references  
7 throughout the --  
8 COMMISSIONER HAUSER: Yes.  
9 MR. GALBRAITH: Okay.  
10 COMMISSIONER HAUSER: Do we have the language on  
11 your proposed change to the Implementation Schedule?  
12 MR. GALBRAITH: Yeah, you want me to just read it  
13 out?  
14 COMMISSIONER HAUSER: Sure.  
15 MR. GALBRAITH: In - in response to Chairman  
16 Herrmann's comment on the Implementation Schedule  
17 with Aimee's assistance, where I - the handout that  
18 I've given you - the last sentence under - after  
19 Number Two - well, I'll just read the whole  
20 sentence. "Notwithstanding any provisions of 9H1,  
21 all permits shall ensure compliance with effluent  
22 limits to protect whole body contact and secondary  
23 contact recreation by no later than December 31st,  
24 2013, unless the permittee presents an

68

1 evaluation sufficient to show that disinfection is  
2 not required to protect one or both uses or a UAA  
3 demonstrates that one or both designated

4 recreational uses are not attainable in the  
5 classified waters receiving the effluent." It's  
6 basically a repeat of the language that's in H1.  
7 CHAIRMAN HERRMANN: Are you moving that?  
8 COMMISSIONER HAUSER: I move we accept that  
9 language and, in addition, the language that Ed  
10 recommended under 10 CSR20-7.031 parenthesis 10 - I  
11 think that references this. I move we accept Ed's  
12 recommendations with the changes.  
13 COMMISSIONER HARDECKE: Second.  
14 CHAIRMAN HERRMANN: Discussion? Dissenting opinion?  
15 There's no dissenting opinion. The Chair is  
16 authorized to declare that the motion passed by  
17 acclamation. Any other amendments?  
18 MR. GALBRAITH: There were several. We don't want  
19 to miss Phil's amendment to the next item on 9 - 9H  
20 with EPA approval. Was that included in the  
21 original motion? I just wanted to make sure we  
22 capture that. That was for the high flow requiring  
23 the suspension being subject to public review,  
24 comment, and Clean Water Commission and EPA approval

69

1 under I. I'm sorry - under - under the effluent  
2 regulations of 15, parenthesis I, Number Three. I  
3 think it was the very last page of the -

4 COMMISSIONER PERRY: I move that we accept that  
5 language as amended where it says, "Subject to peer  
6 review and comment and EPA and Clean Water  
7 Commission approval." Is that what we're talking  
8 about? I'm sorry - Clean Water should be before  
9 EPA.

10 CHAIRMAN HERRMANN: Is that your motion, Kristin?

11 COMMISSIONER PERRY: Yes.

12 COMMISSIONER HAUSER: Second.

13 CHAIRMAN HERRMANN: Any dissenting opinion? Chair  
14 declares the motion passed by acclamation.

15 COMMISSIONER PERRY: Along those lines, I have a  
16 question.

17 CHAIRMAN HERRMANN: Pardon?

18 MR. GALBRAITH: Can I clarify the motion just to  
19 make sure we've got --

20 COMMISSIONER PERRY: Yes.

21 MR. GALBRAITH: Are you - are you wanting to insert,  
22 "Subject to peer review," because it's not in the -  
23 in the --

24 COMMISSIONER PERRY: Oh, did I say peer instead of

70

1 public?

2 MR. GALBRAITH: Yes.

3 COMMISSIONER PERRY: I'm sorry. I meant public. I  
4 was thinking scientifically.

5 CHAIRMAN HERRMANN: Just to go back to ancient  
6 history, I have the settlement agreement, I have the  
7 consent decree, I do not have a letter of September  
8 for the Commission from EPA, which I would want to  
9 have in these further discussions. I can get that  
10 from Ed.

11 COMMISSIONER PERRY: May I raise a question while  
12 we're talking about the high flow exemption? That's  
13 a high flow exemption for effluent regulations and  
14 my question is why do we not have something similar  
15 in water quality standards?

16 MR. SCHROEDER: Yeah, the original suspension of  
17 standards - or in water quality standards - we moved  
18 it over into the effluent regulations to be able to  
19 reflect that it's a site specific determination  
20 based on each discharge. And we felt that it  
21 addresses better some of the concerns EPA's  
22 stressing to us in terms of looking at each  
23 situation independently in terms of the conditions  
24 of that stream below the discharger in terms of the

71

1 uses there, the flow conditions, or what other  
2 conditions might affect the uses in that location.  
3 And to apply the relief, if you will, from bacterial  
4 - the need to meet bacterial standards on a

5 side-by-side basis on a facility-by-facility basis.  
6 COMMISSIONER PERRY: But then it would only apply to  
7 those who had discharge permits. Is that correct?  
8 MR. SCHROEDER: Well, you can - you can probably  
9 read that in there if that's in the effluent  
10 regulations that applies to point sources.  
11 COMMISSIONER PERRY: Right, and so my concern is  
12 what happens to nonpoint sources?  
13 MR. SCHROEDER: Right.  
14 COMMISSIONER PERRY: They had some protection, you  
15 know, having the high flow exemption in the water  
16 quality standards.  
17 MR. SCHROEDER: Yeah, we - we tried to address that  
18 to some extent by the language that we proposed and,  
19 if I could find it, I'll read this to you. Okay, in  
20 the very last sentence where we added the language  
21 about EPA and Clean Water Commission approval, it  
22 states in there that, "Shall become - shall be  
23 contained as a condition into a discharge permit or  
24 other written document developed into public

72

1 participation." The reason why we put other written  
2 document is - is  
3 END OF TAPE ONE, SIDE B.  
4 BEGINNING OF TAPE TWO, SIDE A

1 MR. SCHROEDER: The specific application of the  
2 controls or - or the no need for controls in that  
3 situation. Rather than having to contain it always  
4 in a permit application, it could be in some other  
5 type of publicly accessibly - public review document  
6 that could apply to other sources than those that  
7 receive permits. Somewhat of a stretch when you put  
8 it in the effluent limitations, but I think it can  
9 work.

10 COMMISSIONER HARDECKE: Could we not put that in the  
11 water quality standards as well?

12 MR. SCHROEDER: Well, if you put it in the water  
13 quality standards, it will apply to specific water  
14 body and the considerations that we want to put in  
15 there that it be facility-by-facility or  
16 discharger-by-discharger review, it would be  
17 difficult to maintain that path - that purpose.

18 COMMISSIONER HARDECKE: But a high flow event would  
19 be water body-by-water body.

20 MR. SCHROEDER: Right, but it's also based on the  
21 actions that a discharger can take - let's say under  
22 the - if you use a use attainability analysis, then use  
23 Criterion Six where they have to show widespread  
24 economic - social economic impact. From having to  
25 take the action, this is - meet the quality



1 standard, that's really based on the actions taken  
2 by specific facility or by watershed group or  
3 whatever that may be. So if we put it in the  
4 standards and Criterion Six was to be used through  
5 the use attainability analysis that all - of all  
6 potential bacterial discharges within that  
7 watershed, point source and nonpoint source, would  
8 have to be considered in that UAA. And we would not  
9 - what I'm thinking of is if there is a particular  
10 discharger that needs the relief through Criterion  
11 Six of a use attainability analysis, they're not going  
12 to be able to get that until we consider all of the  
13 other potential bacterial sources within that water  
14 shed. And so you're just basically creating a  
15 watershed approach in every single situation where  
16 you want to give it an exemption. It can't be  
17 discharger specific. It has to be the entire  
18 watershed then that's analyzed through the  
19 use attainability analysis. If that's what you want, I  
20 mean, we can do that, but it's just - it would make  
21 it more difficult on a discharger to gain some  
22 relief from this suspension. In other words, if a  
23 community were to come forward and say that, "We  
24 can't meet bacterial standards through - during  
25 these high flow periods. We just - it would create

1 the substantial widespread social-economic impact to  
2 our community to be able to treat that level." We  
3 would ask them, "Okay, let's see if you qualify for  
4 the high flow exemption." What you'd have to do is  
5 do a UAA on that segment of water below your  
6 discharge point. Make sure the uses don't exist  
7 during the high flow period that you define. Get  
8 the public participation involved in developing this  
9 exemption. Let's get EPA approval and we're done.  
10 We can offer you the exemption. But under what  
11 you're proposing in a water quality standards,  
12 instead, our answer to them would be we'd have to  
13 look at the entire watershed and all sources of  
14 bacteria.

15 COMMISSIONER PERRY: It would have to be like the  
16 city. It would have to be the discharger that would  
17 come and ask for that relief.

18 MR. SCHROEDER: Right.

19 COMMISSIONER HARDECKE: How would we afford that  
20 protection to the nonpoint sources without  
21 affecting --

22 MR. SCHROEDER: We do it in the very same way. If a  
23 - if a - let's say a watershed group were to come  
24 forward and say that, "In order for us to control  
25 bacterial discharges within this watershed, it would

1     cause substantial widespread social-economic impact  
2     to the community." We would use the same argument  
3     in a use attainability analysis, Criterion Six and they  
4     would go through the same process here as a point  
5     source would.

6     COMMISSIONER PERRY: Okay, do the effluent  
7     regulations only apply to point sources? Would  
8     someone come back and say, "Oh, you can't say this.  
9     This is under the effluent - effluent regulations  
10    and that only applies to point source, so you're  
11    S-O-L." Will that happen?

12    MR. SCHROEDER: It's possible. I mean, effluent  
13    limitations - effluent regulations are typically for  
14    non- for point sources.

15    COMMISSIONER PERRY: So - so those people who don't  
16    have permits and may try to want to fix something,  
17    but is - are in trouble because of high flow, have  
18    no recourse or could have no recourse?

19    MR. SCHROEDER: Only if someone challenged the fact  
20    that this recourse that we've developed is in within  
21    - within the effluent regulations in that it is, in  
22    fact, limited only to point sources. We don't  
23    necessarily agree with that. And I think the same  
24    concept can be applied to discharges from nonpoint  
25    sources under this rule. Now, I guess, if there is

1 a legal challenge to that, we'll address that and  
2 will may have to come back to you and propose  
3 something, in perhaps, in water quality standards  
4 that would allow the broader application.

5 COMMISSIONER PERRY: Can you think of a fix? Can  
6 you think of a fix that we can make now or is this  
7 such an issue that will take further consideration?

8 MR. BRYAN: Phil? Phil? Did the notice of proposed  
9 rulemaking identify this issue as one that was going  
10 to be addressed in the water quality standards  
11 rulemaking? Because if it didn't, then it - it  
12 wouldn't be appropriate to make that change now.

13 COMMISSIONER PERRY: Wasn't it removed? Wasn't it  
14 removed?

15 MR. SCHROEDER: Well, what we have currently in the  
16 rule that EPA has objected to is a standard or a  
17 paragraph in the water quality standards that  
18 provides an exemption for all discharges of bacteria  
19 during high flow or whenever - and the words are,  
20 "Whenever a stream or water body's affected by storm  
21 water." That has to be removed, but we want to  
22 offer something back to the Commission that would  
23 allow some form of high flow exemption, but we  
24 really haven't anything to offer you in a water  
25 quality standards at this time that we think would

1 work the way we've intended for this to work on a  
2 site-by-site basis. We can look at that again.

3 MR. BRYAN: But the original notice notified the  
4 public that this item was up for discussion in the  
5 water quality standards rulemaking.

6 COMMISSIONER PERRY: And the fact that it was being  
7 removed, yeah.

8 MR. GALBRAITH: Yeah, this was - this was covered in  
9 the original proposed rulemaking. This was an item  
10 that was originally amended.

11 MR. SCHROEDER: Yeah, but it was proposed in the  
12 effluent regulations, right? In the original  
13 proposal, so we're --

14 COMMISSIONER PERRY: Isn't it also be removed though  
15 from the water quality standards and

16 MR. SCHROEDER: Yes, and we're moving --

17 COMMISSIONER PERRY: therefore, we'd have notice  
18 that it was being removed and, I guess, what I'm  
19 saying is what's the damage of leaving it there  
20 because of that specific case and those who are not  
21 covered by permits? And I'm - I'm also willing to  
22 say this needs some further investigation and - and  
23 if it can't be fixed by a motion that we can take  
24 care of somewhat easily today, I'm willing to say,

25 "Okay, I'd like to see some further investigation on

7

1 this." I'm assuming that we're going to revisit  
2 quite a few of these items and I just wanted to make  
3 sure that that one would then be revisited.

4 MR. SCHROEDER: Sure, if that's the direction of the  
5 Commission, we're - we will, of course, do that.

6 COMMISSIONER PERRY: That - that goes back to my  
7 last question. Is there a fix that we can make  
8 today?

9 MR. SCHROEDER: I - the Staff doesn't have anything  
10 to offer you today.

11 COMMISSIONER HARDECKE: I guess I don't - I guess I  
12 don't understand why if you have it in the effluent  
13 for the permitted operations and you put similar  
14 language in the water quality standards for - which  
15 would cover other exempt - high flow exemption for  
16 other sources, why you would have to apply the whole  
17 water body to that permitted source in giving them  
18 that high flow exemption.

19 MR. SCHROEDER: It - it could possibly work. We  
20 could possibly come up with some kind of language  
21 that would fit within the context of a water quality  
22 standard that would be very similar to what we've  
23 proposed in the effluent regulations.

24 COMMISSIONER HARDECKE: I - I just think it's

25 important to have it covered in both and I don't see

8

1 where the crossover would come when you're dealing  
2 with - when you're dealing with the permitted  
3 operations, you're dealing with that - that source.  
4 And then would provide that for the - everyone else  
5 in the water quality standards.

6 MR. SCHROEDER: I wish I had some language to  
7 propose to you for the water quality standards. I  
8 just - I'm not sure - I can't think that fast up  
9 here, but -

10 CHAIRMAN HERRMANN: Does - I'm sorry. So, Ron and  
11 Kristin, are you still working on this?

12 COMMISSIONER PERRY: Well, I think I'm willing to  
13 have this - have some further studies so it's done  
14 properly. It's just that case that I'm bringing up  
15 is about those nonpoint sources.

16 MR. GALBRAITH: I think - I think Bill does bring up  
17 a good point that, procedurally, we might be on --

18 COMMISSIONER PERRY: On an edge, I realize that.

19 MR. GALBRAITH: On the edge, but what I'm - what I'm  
20 hearing is direction and I'm putting it on my list  
21 of --

22 COMMISSIONER PERRY: Right. And if we could do  
23 that, I would may be happy and I - I don't think we

24 made a motion. It was a question. And I have - are  
25 - are - are we still coming up with these? Way back

9

1 at the beginning, Phil, you're very first issue was  
2 over what those e-coli numbers should be and was  
3 there a recommendation on - on what the rules should  
4 say?

5 MR. SCHROEDER: On - on the - when we talked about  
6 the 206 as opposed to the five forty-eight? Is that  
7 what --

8 COMMISSIONER PERRY: Mmm-hmm.

9 MR. SCHROEDER: We're recommending - no, we're not  
10 recommending any changes from what we had proposed  
11 or what showed up in the Missouri Register as a  
12 proposed rulemaking on May 2nd. There's been no  
13 recommended changes to the criteria. I just wanted  
14 to bring that up because it was a - a large  
15 significant issue of discussion between us and EPA  
16 and they had stated to the Commission at an earlier  
17 Commission meeting they would disapprove the rule if  
18 that numbers stayed in the rule.

19 COMMISSIONER PERRY: Right.

20 MR. SCHROEDER: So I just wanted to reassure the  
21 Commission that we had talked to EPA about that  
22 issue. That we had reached an agreement, if you  
23 will, of how we would handle further review of that



24 standard rather than coming back to the Commission  
25 at this moment and - and proposing a new number.

10

1 COMMISSIONER PERRY: And I think there's also been a  
2 suggestion made using a narrative for secondary  
3 contact and you feel that's not necessary?

4 MR. SCHROEDER: That's an option, but it's a much  
5 more difficult option to apply.

6 COMMISSIONER PERRY: I agree with that.

7 MR. SCHROEDER: So, I mean, generally criteria  
8 normally means that some kind of observation has to  
9 be made of either the stream or, in this case, since  
10 it's a health standard, you'd basically be looking  
11 at the public health in - in that would result from  
12 a bacteria level within the stream and how would you  
13 determine that general criteria was exceeded if - if  
14 the standard is - is public health is impacted? How  
15 do you make that determination? When - when more  
16 than ten people out of a thousand get sick in order to  
17 make - meet the risk assessment standard? I mean,  
18 it's a very difficult approach.

19 COMMISSIONER PERRY: I thought that was a problem  
20 for science in the first place and - and how to tell  
21 what they got sick from.

22 MR. SCHROEDER: Right.

23 COMMISSIONER PERRY: A hotdog stand on the  
24 waterfront could been as much of a cause. Okay, you  
25 answered that question. I have no motion to make on

11

1 that.  
2 CHAIRMAN HERRMANN: Yeah, I guess. Anything else?  
3  
4 MR. GALBRAITH: Phill, were there any other  
5 recommended changes that you had that we haven't  
6 covered in this motion? Okay, alright, thank you.  
7 CHAIRMAN HERRMANN: Since - since there are - we  
8 have had discussions about items for the Staff to  
9 consider as future considerations of the Commission,  
10 I'm told by legal counsel that since it was not a  
11 proposed change in these regulations, it's not  
12 appropriate for me to make it as a proposed change  
13 to the rule, but I will offer it as a future  
14 consideration and a procedure to be utilized by  
15 Staff in review of permits. And I don't have my  
16 effluent standards open to the appropriate place,  
17 but I think the correct paragraph is 9B2, wherein,  
18 it states that, "A water quality impact study to  
19 allow higher discharge limits on lagoons or  
20 trickling filters requires a water quality impact  
21 study by either the Department or the - the  
22 applicant." My proposal is that Staff consider

23 anything under twenty-two thousand five hundred  
24 gallons per day as a lower limit for that  
25 consideration of requiring a water quality impact

12

1 study. The reason being, that twenty-two thousand  
2 gallons five hundred is the defined cutoff point in  
3 all of our other regulations as a small treatment  
4 plant. In my opinion, the discharge from a water  
5 quality - or from a twenty-two thousand five hundred  
6 lagoon or trickling filter into a water body is  
7 negligible in its consequence and, therefore, we can  
8 eliminate consideration. That's for future  
9 consideration of the changes in the rule.

10 COMMISSIONER PERRY: Do we need a motion on that?

11 CHAIRMAN HERRMANN: I guess we can have one.

12 COMMISSIONER PERRY: I was thinking if we had it as  
13 a motion, it would be more of a directive to Staff

14 --

15 CHAIRMAN HERRMANN: Okay.

16 COMMISSIONER PERRY: than a suggestion and I - I'm  
17 willing to second - or propose that motion,  
18 Chairman.

19 COMMISSIONER HAUSER: Second.

20 CHAIRMAN HERRMANN: Any dissension?

21 COMMISSIONER KELLY: Is this - is this future

22 discussion only you're - you're talking about, Tom?  
23 CHAIRMAN HERRMANN: On eliminating the - the  
24 requirement for a Staff or applicant water quality  
25 impact study on any lagoon or trickling filter under

13

1 twenty-two thousand five hundred gallons per day  
2 design flow.  
3 COMMISSIONER KELLY: Okay, but you're talking about  
4 future, not the present.  
5 CHAIRMAN HERRMANN: Well, I'm told by legal counsel  
6 that I can't make that because it was not a  
7 published change that JCAR would shoot us down  
8 if I tried to put it in there.  
9 MR. BRYAN: Chairman Herrmann, I think that based  
10 on what I understand from talking with Phil on what  
11 he showed me, you could have what was in the rule  
12 remain in the rule. If that - it appears that that  
13 was part of the notice of proposed rulemaking was  
14 deleting enforcement of the rule, you could not do  
15 that. That - that is an option. I also - I looked  
16 at that language and it didn't appear to address the  
17 concern that was raised by Commissioner Hardecke and  
18 - and Commissioner Perry really anyway, so I think  
19 that you probably - to accomplish what your real  
20 objective is, you need to go through another  
21 rulemaking and provide that kind of exemption.

22 CHAIRMAN HERRMANN: Right.  
23 MR. BRYAN: Just a few words in - in the whole  
24 rule.  
25  
26 CHAIRMAN HERRMANN: So it's appropriate as a directive from the  
25 Commission to the Staff to consider it as --

14

1 MR. BRYAN: Yes.  
2 COMMISSIONER HERRMANN: as a future change?  
3 MR. BRYAN: Yes.  
4 CHAIRMAN HERRMANN: And also as a policy in there  
5 for review of permits at the present time.  
6 MR. BRYAN: Sure.  
7 CHAIRMAN HERRMANN: Okay. Everyone understand that?  
8 I think we have a motion and a second. Is there  
9 any dissension? Hearing none, we'll declare that  
10 motion as passed by acclamation. Okay, taking up  
11 the rule in general with the amendments.  
12 MR. GALBRAITH: Would it be helpful, Chairman, if  
13 there were - well, at some point if we're done with  
14 amendments, I might suggest that we reread the  
15 motion just to make sure we are - have all the  
16 motion and amendments. I've been keeping track and  
17 so I'll be happy to reread those if you --  
18 CHAIRMAN HERRMANN: Okay, go.  
19 MR. GALBRAITH: if you're - okay. The motion - I

20 have it down here is to approve the final order of  
21 rulemaking for 10 CSR 25-7.015 and 10 CSR 25-7.031  
22 except for Table H, as recommended by Staff subject  
23 to the following amendments and I have three  
24 amendments that were - that were approved. First  
25 was changing the average to geometric mean in the

15

1 effluent regulation - all the places where that is  
2 mentioned under fecal choloform. Amendment Two was  
3 the Staff recommended change. The implementation  
4 schedule in the effluent regulation under Section 9H  
5 and under the water quality standards under Section  
6 10. And the third amendment was to insert the  
7 language about a Clean Water Commission and EPA  
8 approval under the effluent regulation Section 9,  
9 Parenthesis I, Number Three, having to do with the  
10 high flow exemption. Did I capture everything? So  
11 that's - okay.

12 CHAIRMAN HERRMANN: Okay. We'll consider the - the  
13 rule as amended by Staff recommendation.

14 COMMISSIONER HAUSER: I move we approve the rule  
15 as amended with the exception of Table H.

16 COMMISSIONER EASLEY: Second.

17 CHAIRMAN HERRMANN: Any discussion? Please call for  
18 the vote, Marlene.

19 MS. KIRCHNER: Commissioner Hardecke?

20 COMMISSIONER HARDECKE: Yes.  
21 MS. KIRCHNER: Commissioner Easley?  
22 COMMISSIONER EASLEY: Yes.  
23 MS. KIRCHNER: Commissioner Hauser?  
24 COMMISSIONER HAUSER: Yes.  
25 MS. KIRCHNER: Commissioner Kelly?

16

1 COMMISSIONER KELLY: Yes.  
2 MS. KIRCHNER: Commissioner Perry?  
3 COMMISSIONER PERRY: Yes.  
4 MS. KIRCHNER: Chairman Herrmann?  
5 CHAIRMAN HERRMANN: Yes. Okay, before we get into  
6 Table H, I think it's appropriate we should have  
7 about a five minute recess for personal reasons and  
8 that I get to the coffee pot before the people in  
9 the back of the room drink it all up.  
10 (SHORT BREAK)  
11 CHAIRMAN HERRMANN: We turn the meeting back to  
12 order and discuss the thorny subject of the Table H  
13 in 7.031. Any introductory remarks you want to  
14 make, Ed?  
15 COMMISSIONER HARDECKE: Mr. Chairman?  
16 CHAIRMAN HERRMANN: Yes?  
17 COMMISSIONER HARDECKE: I got a quick motion to make  
18 in regard to our discussion of the high flow

19 exemption and the water quality standards. I'd like  
20 to make a motion for it to direct Staff to look into  
21 that for future rulemaking - put that in the form of  
22 a motion.

23 CHAIRMAN HERRMANN: Okay. Second?

24 COMMISSIONER PERRY: Second. Second.

25 CHAIRMAN HERRMANN: Been moved and seconded. Any

17

1 dissension? Discussion? Bearing none, that  
2 directive will be given to the Staff. Okay, did you  
3 want to introduce anything in the UAA's or do you  
4 want me to give my sermon?

5 MR. GALBRAITH: I'll give the pre-sermon, I guess.

6 Mr. Chairman and Commissioners, we received as - I  
7 think I stated to you in my memo, over twelve  
8 hundred comments on the - on the UAA's. Many  
9 comments did not address a specific UAA or stream  
10 body; however, many did and so we tried our best to  
11 organize the information in a way that the  
12 Commission could see very quickly where somebody had  
13 indicated that they do swim or there is whole body  
14 contact or the depth criteria on a given stream  
15 segment does occur contrary to the findings of the  
16 UAA and contrary to the original findings of the -  
17 of the UAA Committee. It was my choice to present  
18 these to you in the form of - of information



19 rather than recommendation and the way that I did  
20 that was on List One to denote in - in - in the  
21 column specific claim of whole body contact use or  
22 evidence that meets depth criteria with a Y that  
23 that particular comment specifically - made a  
24 specific, credible, in my opinion, claim that whole  
25 body contact was attainable in that stream segment

18

1 and, however, because it's a policy issue, I stopped  
2 short of - of making a clear recommendation. My -  
3 my opinion and, I think, the opinion of Staff is  
4 that where - where public - where members of the  
5 public do advise us of whole body contact use in the  
6 stream, irregardless of what the UAA may or may not  
7 state, the Commission should take that very strongly  
8 in account in favor of - of whole body contact;  
9 however, that's my, I guess, that's the closest to a  
10 recommendation as I'm going to give today. Thank  
11 you.

12 CHAIRMAN HERRMANN: Okay, just to explain to the  
13 assembled group how seriously the Commission took  
14 this and the Staff took this consideration of  
15 use attainability analysis. A little background,  
16 there's three thousand seven hundred fifty-four  
17 classified stream segments in the State of Missouri

18 and there were three hundred ninety-six segments  
19 subjected to UAA's. That's 10.5 percent of the  
20 total stream numbers in Missouri. Not miles, but  
21 numbers. Those UAA's included eighty-six counties  
22 and the City of St. Louis, which amounts to 75.7  
23 percent of the representation of the land area of  
24 the State of Missouri, which is a hundred fourteen  
25 counties and - and the City of St. Louis. The

19

1 Committee recommendations coming from that  
2 consideration of the UAA's, and incidentally, I like  
3 what some people have said previously is that I  
4 think the Committee and the Staff did a heck of a  
5 job in going through and analyzing all of these  
6 UAA's. Some of them very, very detailed and very,  
7 very extensive. Others were so-so in their  
8 presentation, but out of those three hundred  
9 ninety-six, Staff came up with, I think, very valid  
10 recommendations. They had one hundred fifty-one of  
11 the UAA's in which they said we should remove the  
12 use of the whole body contact. They had 4.5  
13 percent, which was modified - designated as  
14 "modified" - and ask what "modify" meant, and they  
15 meant - or they said that might mean dividing the  
16 total defined segment of the stream up into smaller  
17 segments and one part should be whole body contact,

18 the other part should not be whole body contact. So  
19 that was eighteen of those. They had inconclusive  
20 on forty-nine UAA's and that inclusive -  
21 inconclusive meant the same thing. That there  
22 should be further study to accurately define whether  
23 it should have whole body contact or not. One  
24 hundred seventy-eight of the UAA's, which is  
25 forty-five percent of the total submittal, were

20

1 recommended as retain the whole body contact use.  
2 We also totaled that there are a hundred - one  
3 hundred six of the segments on which comments where  
4 UAA's were submitted that had no point source  
5 discharge. That's almost twenty-seven percent of  
6 the streams. There's no point source discharge to  
7 those streams. By way of clarification, there were  
8 three hundred sixty of them to Class C. As we said,  
9 the public comment period on the rule itself ended  
10 on July 14th. Public comment period on the UAA's  
11 ended on August 24th. And during that period, they  
12 received over twelve hundred comment letters from  
13 individuals. Six hundred twenty-four of the twelve  
14 hundred plus comment letters agreed with the  
15 assessment of the - of the Staff. And there were -  
16 that constituted, primarily, six stream segments.

17 Ninety-six on the same stream, seventy-three on  
18 another stream, fifty-one on another stream,  
19 forty-three on another, thirty-nine on another, and  
20 thirty-five on two others. Thirty-five each on two  
21 other streams, so a lot of them - a lot of these  
22 letters were concerned with the same stream. We had  
23 comments from - on eleven streams in which there was  
24 no UAA completed. They were commenting on general  
25 criteria. In some cases, in many cases, I think

21

1 these letters were based on inaccurate or fallacious  
2 articles in local newspapers in which they said,  
3 "Well, don't be putting raw sewage in our streams."  
4 And that is certainly not the intent of this  
5 consideration. It is the consideration of the  
6 Commission and the Staff to afford the highest level  
7 of protection afforded to a stream that it should,  
8 yet, we were concerned as some of the letters were  
9 almost duplicate. For instance, one person  
10 submitted one hundred letters on one hundred  
11 sixty-eight streams in fifty-nine counties. They  
12 said there's one hundred fourteen counties and - and  
13 the City of St. Louis in the State of Missouri, so  
14 that means that that individual expresses a  
15 familiarity - an intimate familiarity with all the  
16 streams in more than half of the State. Another

17 person submitted fifty-two letters for eight  
18 counties. Another forty-one letters on streams in  
19 seven counties and another one thirty-six letters on  
20 streams in fifteen counties. So there's some people  
21 that, obviously, have been expressing other than a  
22 basis of judgment - based on quote "Sound scientific  
23 structured scientific assessment," which is what it  
24 says on our UAA protocol and what it says in the  
25 Federal regulations. That any of these assessments

22

1 should be based on sound, structured scientific  
2 basis. So we did consider all these letters in  
3 their principal context. For the benefit of the  
4 assembled group and what I'd like to tell most of  
5 these people who submitted most of these letters and  
6 of a general nature is that Number One, e-coli is  
7 not a bacteria - not an illness causing bacteria.  
8 E-coli is an indicator bacteria, which is easily  
9 identifiable. And it - I - it expresses the  
10 probability there are other bacteria or viruses that  
11 may cause gastral intestinal illnesses. So the -  
12 the fact that e-coli may be prevalent in a stream at  
13 a certain number, is not necessarily a health risk.  
14 It is an indicator of that possibility. Secondly, I  
15 think the public has a perception that you can go

16 down to a stream with a piece of magic equipment,  
17 dip it in the water and say, "Ho, ho, hey, we got  
18 two hundred e-coli." Well, that's not the case.  
19 You take a sample, you develop culture slides and  
20 after several days of developing those, you make a  
21 count of the colonies formed on that slide. And  
22 that takes several days. We did take seriously  
23 those letters that people who said they or members  
24 of their family or they observed people swimming in  
25 the creek. And those, regardless of whatever the

23

1 recommendation of the Committee was originally,  
2 those we said require further study and assessment.  
3 There were twelve letters on streams of which there  
4 is no individual point source discharge. There were  
5 eight - or twelve on which the - the Committee  
6 already said modify so that sets them up for further  
7 study. So by - by agreeing that the people's  
8 letters that they observed swimming or they did swim  
9 in the stream, were saying, "Okay, I know it's  
10 twelve, but requires further study to verify their  
11 contention on Staff's modify recommendation." There  
12 was one that was on a stream designated for  
13 inconclusive and that falls in the same category.  
14 There were sixty-one letters alleging swimming in a  
15 stream where we may have had removed as a

16 determination of the Committee. And I have a list  
17 of those - the numbers of letters. Some of them one  
18 letter. The most was twenty letters on a particular  
19 stream. Most of them were one or two letters, but  
20 since someone alleged swimming in that stream, then  
21 we think the Committee should have a second look at  
22 it and determine that their - their contention is  
23 valid or - and maybe the Committee made a mistake  
24 or, no, the Committee was right in the first place  
25 and their definition of swimming and ours is not

24

1 consistent and, therefore, should be removed, but  
2 that we suggest should be maintained as its present  
3 classification pending further study and a - the  
4 next round of review of these UAA's. I have the  
5 list of the streams in which swimming was alleged  
6 and that also is in the Staff's list of comment  
7 letters that we got and the box of comment letters,  
8 which we were sent. My room looks like Katrina went  
9 through my - my room because I've got boxes and  
10 papers that Ed has very diligently sent me. Box  
11 upon box and kept UPS in business by sending these  
12 things to us. To all of us, not just to me. So,  
13 based on - on that, we would suggest the retention  
14 of swimming classification for those streams in

15 question where swimming was alleged or where the  
16 Staff said retain and pending further and future -  
17 future study. Anyone else have revisions?  
18 COMMISSIONER KELLY: I want to understand exactly  
19 what we're going to be voting on the Committee  
20 recommendation. The ones that are further study,  
21 exactly what does that mean? When is that going to be  
22 taking place and who's going to be doing it?  
23 CHAIRMAN HERRMANN: The Staff will be doing it or  
24 getting the individuals who prepared the initial UAA  
25 to go out and do a second look - a second study of

25

1 that particular stream and perhaps contact the  
2 people who wrote the letter.  
3 COMMISSIONER KELLY: Now, I'm - I'm concerned that  
4 we take very seriously even one letter about a  
5 stream that justifies to swimming in these streams.  
6 When you get as many letters as we did from all  
7 kinds of people in this very short time, it's hard  
8 for me to imagine that anyone would be sending in a  
9 letter to say that they and their children and -  
10 have been swimming, that that would not be - I - I  
11 don't understand why that's not sufficient to  
12 immediately give those whole body contact. It's my  
13 understanding that we're supposed to be giving the  
14 benefit of the doubt to that and that people have to



15 show why they should not be - a stream should be  
16 swimmable. And I think if people are saying that  
17 indeed they do swim, then whoever did their UAA has  
18 - has not shown why they should not have to do that.  
19 So I don't understand why - I'm concerned that we  
20 are just sort of leaving these people in limbo until  
21 somebody - and I'm especially concerned that the  
22 original people are going to be going out and  
23 looking once more. It appears they didn't do a very  
24 good job the first time. And, again, maybe they didn't -  
25 didn't have time enough, but clearly they didn't

26

1 come up with a swimmable --  
2 CHAIRMAN HERRMANN: As I tried to explain in my  
3 sermon, Cosette, we do take it seriously that people  
4 say, "I swam in that river." Now it is the  
5 determination, is their definition of swimming the  
6 same as our legal regulatory definition of swimming  
7 and do they actually swim in the letter or is it a  
8 contention and so, for the present time, we would  
9 leave it as whole body contact until either proven  
10 or disproven for the next round of consideration.  
11 COMMISSIONER KELLY: I - I didn't know we had to  
12 define swimming now. I don't know. Maybe these  
13 people are not very good swimmers --

14 CHAIRMAN HERRMANN: Well, we define whole body  
15 contact - I'm sorry.  
16 COMMISSIONER KELLY: if they get in and flail their  
17 arms around, I think I would call that swimming.  
18 CHAIRMAN HERRMANN: We define whole body contact.  
19 COMMISSIONER KELLY: But, again, you know, I can  
20 sermonize, too, on this. And these people - many of  
21 them are very - are unaccustomed to writing letters.  
22 You can tell that by looking at them and yet they  
23 thought enough of it to get those written. I think,  
24 also, on the matter of just one person writing, when  
25 Congressmen get one letter, they usually assume that

27

1 you have ten or fifteen people out there of the same  
2 opinion and I think, very likely, that the people  
3 who wrote in - they are not the only ones who are  
4 swimming. CHAIRMAN HERRMANN: Well, I - I agree  
5 with that contention and I would also state that  
6 many of the letters, very many of the letters, are  
7 obviously a form letter prepared and signed by  
8 innumerable individuals.  
9 COMMISSIONER KELLY: Well, on the contrary, I found  
10 those to be very much in the minority and, you know,  
11 I sat and read all of them. And, you know, I have  
12 never seen such an outpouring of letters. We have  
13 never received anything in the years that I have

14 been on the Commission. Yeah, it's true there were  
15 some people and, of course, you have a thin stack of  
16 duplicates and it's kind of annoying when you get  
17 those. Some people sign them because they don't  
18 know how to write a letter or won't take the time,  
19 but you always get that on any kind of - of - of  
20 request that you send out.

21 CHAIRMAN HERRMANN: Well, I don't think you and I  
22 have an argument, Cosette. I'm saying that if  
23 people contend that they swim, and that's their  
24 terminology, in a stream, then I say we give them  
25 the benefit of being correct and we require a second

28

1 look and maybe even contact with those individuals  
2 who - who reported to have been swimming in that  
3 stream. So until - until we prove that - if we  
4 prove that their contention of swimming is not valid  
5 and it's not classified for whole body contact, it  
6 will remain on the list as whole body contact.

7 COMMISSIONER KELLY: But we, you know, as I said,  
8 the enormous number of letters and letters also from  
9 people - I understand why they couldn't be listed  
10 here because they didn't say that they had swum in a  
11 particular river, but we had many, many letters of  
12 people who said they wanted all the streams in

13 Missouri to be clear and clean and people who - were  
14 expressed horror at the idea that anyone would  
15 suggest they should not be and again and again  
16 people said, "I want these streams to be clean for  
17 my children, for my grandchildren." That's  
18 something else we should be thinking out because  
19 even if somebody is not out there swimming  
20 constantly now with the population growing as it is,  
21 these streams are going to be subjected to more use  
22 and it's ever more important that we see that they  
23 can be so used. Now, I think pollution is not a  
24 right just because people who, for whatever reason,  
25 did not get a use attainability analysis that would

29

1 allow for swimming. We still - I think that is our  
2 obligation to see that it is done. So that's the  
3 end of my sermon.  
4 CHAIRMAN HERRMANN: Well, we can have a several-day  
5 discussion about this, Cosette, but I think we're  
6 affording - by this, we're affording the protection  
7 that is due these people who have a contention. We  
8 are not allowing gross pollution of a stream. We're  
9 still holding them to certain standards. We're not  
10 allowing the discharge of - of untreated, raw sewage  
11 as most of the letters would contend to any of these  
12 streams. We are merely affording the protection

13 that is necessary for that beneficial designated  
14 use. Other than my list of sixty-one, sixty-two,  
15 seventy-four, eighty-six - eighty-six streams in  
16 which there was contention of swimming for which  
17 I've given a list to the Director. Are there any  
18 other recommended changes to Table H?

19 COMMISSIONER HAUSER: I - I would move having  
20 reviewed the UAA for the River Des Peres that the  
21 River Des Peres have the whole body contact  
22 designation removed.

23 COMMISSIONER PERRY: Do you want to explain why?

24 COMMISSIONER HAUSER: Well, I haven't reviewed the  
25 UAA. I don't believe the whole body contact

30

1 designation is appropriate for the River De Peres  
2 since its inception, basically being an open storm  
3 sewer in St. Louis County. And I do live in  
4 reasonable proximity to it and have some familiarity  
5 with it. I think Tom was also familiar to some  
6 degree with it.

7 CHAIRMAN HERRMANN: Very familiar.

8 COMMISSIONER KELLY: Now, Paul, you're talking about  
9 during your lifetime. How do you know it hasn't  
10 always been a ditch? It is, indeed, a very foul  
11 stream right now. I've - I've been there, too.

12 CHAIRMAN HERRMANN: Because it was constructed in  
13 the 1930's by WPA as a storm water ditch to  
14 straighten the line and improve what was then a  
15 meandering stream of - called River De Peres and I  
16 have the pictures of when it was constructed during  
17 the '30's and the WPA methods used in that - that  
18 construction. It has always been intended as a  
19 storm water channel. The only difficulty is a  
20 sanitary sewer is below the - the channel and does, at  
21 certain times, in high flow, put some contaminant  
22 into that channel, but only at times when there is  
23 flow in the channel. And that channel, by the way,  
24 is on rock at about one-one thousandths percent  
25 slope and that's the reason that the silt deposits is

31

1 so evident in the bottom of that stream. And the  
2 only classified portion of River De Peres is from,  
3 essentially, Gravois Creek to the Mississippi River.

4

5 COMMISSIONER PERRY: I second the motion.

6 CHAIRMAN HERRMANN: Okay --

7 END OF TAPE TWO, SIDE A

8 BEGINNING OF TAPE TWO, SIDE B

9 MR. GALBRAITH: If the

10 Commission approves this, it's likely one that EPA  
11 will take a second look at based on procedural

12 grounds, not having gone through their required  
13 thirty days. In other words, you have to sort of  
14 declare the intention to remove it then allow for  
15 thirty days of comment and that will not have  
16 happened in this case. So, I just want to make the  
17 Commission aware of that procedural issue.

18 CHAIRMAN HERRMANN: How is that different than any  
19 other UAA that we're considering here? They've all  
20 been published. They've all been distributed. They  
21 all had a public comment period through August 24th,  
22 as did River De Peres.

23 MR. GALBRAITH: Well, I don't want to speak for EPA,  
24 but I guess I'll start. The - the use change - I  
25 think you have to declare the use change to remove

32

1 it. You have to declare that you're going to remove  
2 the presumption of use and then allow for thirty  
3 days. As I recall, we did not make that initial  
4 declaration that we were going to change the use in  
5 our - in our publishing of July 25th. Is that  
6 correct, Phil? Am I speaking correctly there?  
7 Okay.

8 CHAIRMAN HERRMANN: Any designated use would be a  
9 change.

10 MR. GALBRAITH: Well, under this rulemaking, that's

11 --

12 CHAIRMAN HERRMANN: The old rule didn't have it.

13 MR. GALBRAITH: technically true.

14 CHAIRMAN HERRMANN: It didn't have a beneficial use  
15 of whole body contact in one form or the other.

16 MR. GALBRAITH: It meets the test of our rulemaking,  
17 that's true. I don't think - and this is probably  
18 at the point which Leo ought to address the  
19 Commission. I don't think it's - it will pass their  
20 review if I understand this process correctly.

21 MR. ALDERMAN: Obviously, we haven't looked at the  
22 designation because it sounds like it's just coming  
23 up today, but - but Ed is absolutely correct. It's  
24 - it's not the UAA, necessarily, that we're making a  
25 decision on. The UAA documents the appropriate

33

1 designation and that's what we will be looking at on  
2 the use designations that the State makes. Now,  
3 Ed's - Ed - I'm just going to repeat back what Ed  
4 said. If the use designation was not made on this  
5 during the public comment period and it is just  
6 being made today and the public was not afforded the  
7 opportunity to comment on that proposed - it becomes  
8 a proposed designation, that - that would be subject  
9 - we probably would have some concerns about that.  
10 We're not necessarily judging why you're making that



11 - that proposed designation, but to the fact that it  
12 was not afforded the public comment. The way the  
13 rule is set up is that all water bodies are deemed  
14 to be fishable/swimmable unless the use designation  
15 provides otherwise and I think that's what I'm  
16 hearing Ed say is that during this public comment  
17 period, that use designation was not made. Is that  
18 correct? Different than fishable/swimmable?  
19 CHAIRMAN HERRMANN: I will bow to our legal counsel,  
20 but I say when the UAA was done - when the UAA was  
21 distributed, that was open for public comment. The  
22 fact that nobody commented on it is immaterial in my  
23 opinion. The flowchart in the back of the UAA  
24 protocol says that it goes through all the processes  
25 of the Staff. It goes through the Staff Review

34

1 Committee and then it goes to the Clean Water  
2 Commission for their review. And I think we're at  
3 that point now. And I think the public comment  
4 period is satisfied by the public distribution of  
5 the UAA on that stream. Do I have an argument from  
6 the counsel?  
7 MR. BRYAN: I - I think that what you've heard from  
8 Ed and from Leo is - is correct. As a matter of  
9 State law, we - we can satisfy the rulemaking and -

10 and change these designations; however, there's a  
11 distinction between satisfying the rulemaking  
12 requirements in Chapter 536 of State law and it  
13 satisfying the requirements of the Federal Clean  
14 Water Act and the regulations that EPA's  
15 promulgated. And you may not - there - there'll be  
16 an argument that you're not satisfying that  
17 requirement - that you haven't notified the public  
18 of a change in the use designation because under  
19 Federal law, EPA assumes that this use has always  
20 been present and that now you're going to remove the  
21 use designation. And if you haven't provided notice  
22 to the public and haven't had comment to that, EPA's  
23 going to take the position that you haven't  
24 satisfied the Federal Clean Water Act the way I hear  
25 it. Is that - is that correct, Leo? Is that --

35

1 MR. ALDERMAN: Yes. It's the designation is what we  
2 would be judging, not the UAA as far as a - as far  
3 as the standard. The standard that you are  
4 submitting is the designation. The UAA documents  
5 those changes.

6 MR. BRYAN: You can make - we could make the  
7 argument. You could defend what you're doing. If  
8 you want to change - make some changes to Table H as  
9 Commissioner Hauser has suggested, and you could

10 defend that, but I don't - I don't have a high  
11 degree of likelihood and, obviously, Region Seven is  
12 not going to approve that. Beyond that, I don't  
13 know where we go.

14 CHAIRMAN HERRMANN: The original rule had no  
15 designation for whole body contact for River Des  
16 Peres. The proposed revision, which we got  
17 February, 2005, had a bold X under whole body  
18 contact, so that's a change.

19 MR. BRYAN: That's a change for purposes of our  
20 State rulemaking, but not for purposes of Federal  
21 law the way EPA interprets the Clean Water Act, the  
22 way the Court decreed the law in the settlement and in  
23 the consent order. CHAIRMAN HERRMANN: UAA process  
24 was established primarily to give the State an  
25 opportunity to review the sound, scientific

36

1 assessment - on a sound, scientific - loss of words  
2 - based on sound science. For someone to exercise  
3 an opinion countered to sound science, I think  
4 requires sound science to show that. If you're  
5 going to change in the February revision from no  
6 designation to whole body contact, I say that's a  
7 change. Now, if we want to change it to delete that  
8 whole - that X, then I say that's another change and

9 I don't - having done the UAA or having submitted  
10 the UAA, I think that is - and distributed publicly  
11 - and distributed to EPA and EPA didn't choose to  
12 make any comment on any of the St. Louis area  
13 streams. They didn't comment on Maline Creek, they  
14 didn't comment on Mississippi River and they didn't  
15 comment on the River De Peres. So I'm saying if  
16 you didn't comment on it, then you - by inference,  
17 you gave your approval.

18 MR. BRYAN: There's ample basis for that in Federal law and  
19 other environmental laws, but I don't know that  
20 that's the issue here that Mr. Alderman's raised.

21 COMMISSIONER HARDECKE: Well - yeah, it was raised  
22 published as inconclusive so that would leave it  
23 open to a - a change. It - it didn't in the - what  
24 was published in July did not say retain use. It  
25 said inconclusive, so that's an indication that

37

1 there's a change to be made.

2 CHAIRMAN HERRMANN: Right.

3 MS. DAVENPORT: Commissioner Hardecke, if I  
4 could just add one piece of information that would  
5 factor into your decision as a Commission, I - I  
6 have been told that the inconclusive - although it  
7 did state that it was inconclusive, there was also a  
8 note in the legend on the website that stated that

9 the effect of that inconclusive UAA would result in  
10 the maintaining of the whole body contact use. So,  
11 that - that's one thing you should consider that the  
12 public - that we as a - as a Department Staff put  
13 that on the website when we - when we put the  
14 use attainability analysis on public notice.

15 COMMISSIONER HAUSER: What's the purpose of an  
16 inconclusive designation then if that's the case?

17 MS. DAVENPORT: Well, we wanted to just  
18 distinguish those UAA's that we needed more  
19 information on in the future to be able to make a  
20 recommendation one way or another.

21 MR. BRYAN: I think the bottom line is that when  
22 that inconclusive designation was posted and the  
23 public looked at the UAA's to comment, they were  
24 commenting on the Staff's recommendation of what the  
25 use would be and so the public's opportunity to

38

1 comment was on the designation of these streams as  
2 laid out in the table, not that it would be  
3 designated some other way. So that's - that's -  
4 that's the Federal issue here. Is that adequate  
5 notice - did - did we provide notice for the public  
6 to comment on the change in the use designation?

7 CHAIRMAN HERRMANN: Well, EPA chose not to comment.

8 COMMISSIONER PERRY: Okay, so does that not say that  
9 everything published as of July 14th is the way it  
10 has to be? Is that what you're saying?

11 MR. BRYAN: As a matter of State law, no, but - but  
12 the way I hear EPA is constructing what it's comment  
13 period is, then that's, yes, that's the way that I  
14 interpret it.

15 COMMISSIONER PERRY: And it gets back to my original  
16 problem with this - doing this by rulemaking. This  
17 seems much more like an adjudication than a  
18 rulemaking and that we are, in fact, adjudicating  
19 the rights of very small places and we're declaring  
20 it as a rule and applying the rules of rulemaking to  
21 what is, in essence, an adjudication, which is what  
22 I would argue is that shouldn't stand. And also,  
23 the Commission's not being then given an opportunity  
24 to comment on that which Staff has done, which they  
25 did in a timely basis so that we could review it and

39

1 then come back and say, "We don't like these  
2 things."

3 MR. BRYAN: Two responses. I - I agree with you  
4 wholeheartedly. When we first looked at this, that  
5 was our initial suggestion, frankly, was that it  
6 should be done as an adjudication of these streams  
7 and then you could judge - you could weigh the

8 evidence, you could make a determination based on  
9 the facts with respect to a particular stream  
10 segment, but that was determined that with the scope  
11 of this, there would be two owners because the  
12 number of UAA's you got - three hundred ninety-six  
13 segments that that could require a huge investment  
14 of time, but in the future, I certainly think that's  
15 something we should explore.

16 COMMISSIONER PERRY: Technically, did Staff not make  
17 an adjudication? Did they not consider each - each  
18 water segment and make a judgment and then they put  
19 them together and they're asking us to do it as a  
20 rule where, in fact, we as the rulemaking  
21 adjudication body at this level of administrative  
22 law are not being given that opportunity to either  
23 approve or disapprove of the action of Staff;  
24 therefore, we're just being skipped?

25 MR. BRYAN: I - I - one point I'd - I think before

40

1 we discuss that in any greater detail, we should  
2 probably do it in closed session. That would be my  
3 recommendation, but the - the second point is that  
4 it appears to me that perhaps when we all sat down  
5 together and figured out our timetable, this was  
6 something that was overlooked and I don't think

7     there was an intention based on what I've seen for  
8     anybody to skip the Commission, but it does appear  
9     that we didn't consider that when the public had an  
10    opportunity to comment on the Staff's recommendation  
11    that there should have been an opportunity as well  
12    for the Commission to participate before the public  
13    comment was over.  We - we ran out of time,  
14    obviously.  We all remember we had to figure out -  
15    portion out those days and, perhaps, we should have  
16    had another step in there it turns out today.

17    COMMISSIONER PERRY:  I'd like to point out that many  
18    of us who are volunteers in this endeavor pretty  
19    much wasted a whole weekend, which we would have  
20    enjoyed spending otherwise; however, what I see is  
21    right now, if I understand what you're saying, we  
22    can't discuss any of these individual segments that  
23    we think perhaps had wrongful decisions on because  
24    we can't make an --

25    MR. BRYAN:  Well, what I'm saying is that if you do

41

1     that, it sounds like EPA is - is going to consider  
2     that not in compliance with the public comment  
3     proceedings.

4     COMMISSIONER PERRY:  What - and what if a mistake  
5     was made?  I have one that I'm concerned about that  
6     I don't think anybody even mentioned the fact that



7   there is any swimming whatsoever in this water  
8   segment.

9   MS. DAVENPORT:  If I could just maybe get  
10  some clarification from EPA and I - I'm only  
11  interjecting because I had a conversation with EPA  
12  yesterday, but I thought that the public comment  
13  issue only applied to the group of inconclusives  
14  that were posted and did not - that you didn't have  
15  the same concerns on those groups that we did post  
16  to either remove the use or retain the use; is that  
17  right?

18  CHAIRMAN HERRMANN:  Yeah, I asked the assembled  
19  legal minds why this is an issue in the State of  
20  Missouri and it is not in any of the surrounding  
21  states and particularly to the other states in the -  
22  in Region Seven.  (Inaudible) Not in Kansas it  
23  wasn't.

24  MR. ALDERMAN:  What I'm hearing is - is a couple of  
25  things.  Number one, you asked why we didn't

42

1   comment.  The reason why we didn't comment is  
2   because it was left that it was to remain whole body  
3   contact and that's why we didn't - because that was  
4   our last view of it.  It was a whole body contact  
5   and that's the way the State --

6 CHAIRMAN HERRMANN: This particular stream said  
7 inconclusive.  
8 MR. ALDERMAN: Pardon me?  
9 CHAIRMAN HERRMANN: This particular stream - the -  
10 the recommendation of the --  
11 MR. ALDERMAN: Was - was inconclusive - was  
12 inconclusive and recommended --  
13 CHAIRMAN HERRMANN: That's not according to our  
14 flowchart in the back of the UAA - that is not the  
15 last stop sign. The last stop sign is to  
16 Commission.  
17 MR. ALDERMAN: Right, but I'm just saying that's why  
18 we didn't provide comment on it. You'd asked why we  
19 hadn't provided comment and that's why we didn't  
20 provide comment because our last view of it was that  
21 it was going to be left on and we wouldn't have  
22 commented on one that was going to remain whole  
23 body contact. So that's that. That's that issue  
24 and that's kind of separate. The other issue is on  
25 the public notice that is true is - is that that is

43

1 where we would have a problem with this. It's not -  
2 we're not - we're not debating or disagreeing with  
3 you because we haven't looked at the science behind  
4 it. We're not looking at that. It's the process -  
5 the public process. Was the proper process mandated

6 by the Clean Water Act followed? That's the  
7 question we have before us. Not whether or not it -  
8 it meets the - the use designation of a not, you  
9 know, whole body contact.

10 CHAIRMAN HERRMANN: The Clean Water Act was a - was  
11 adopted in 1972 and amended a few other times  
12 including 1978 and I'm sure that was in place when  
13 Kansas and several other states did their UAA's and  
14 Kansas, in particular, did two hundred eighty-four  
15 of them in one summer period and they didn't go  
16 through EPA's granting of - of approval and review.  
17 They submitted their decisions to EPA and that was  
18 accepted.

19 MR. ALDERMAN: Well, we had to promulgate about four  
20 or five hundred water bodies ourselves when Kansas  
21 submitted their's. We did disapprove - and I can't  
22 remember the exact number, but it was about four or  
23 five hundred that we promulgated - changed the  
24 designation that they submitted to us back to whole  
25 body contact and they are, in turn, as time goes on,

44

1 doing their own designations on that and accepting -  
2 accepting that whole body contact.

3 COMMISSIONER PERRY: Mr. Chairman?

4 CHAIRMAN HERRMANN: Yes?

5 COMMISSIONER PERRY: I am of the belief that our  
6 Commission needs some legal advice and so,  
7 therefore, I would like to move that the Clean Water  
8 Commission go into closed session to discuss legal,  
9 confidential, privileged matters under Section  
10 610.021, Subsection One, Personnel Actions under  
11 610.021, Subsection Three, Personnel Records or  
12 Applications under Section 610.021, Subsection  
13 Thirteen, or Records under 610.021, Subsection  
14 Fourteen, all of the revised statutes of the State  
15 of Missouri, which are otherwise protected from  
16 disclosure by law.  
17 COMMISSIONER HAUSER: Second.  
18 CHAIRMAN HERRMANN: Discussion? Please call for the  
19 vote, Marlene.  
20 MS. KIRCHNER: Commissioner Kelly?  
21 COMMISSIONER KELLY: Yes.  
22 MS. KIRCHNER: Commissioner Perry?  
23 COMMISSIONER PERRY: Yes.  
24 MS. KIRCHNER: Commissioner Hardecke?  
25 COMMISSIONER HARDECKE: Yes.

45

1 MS. KIRCHNER: Commissioner Easley?  
2 COMMISSIONER EASLEY: Yes.  
3 MS. KIRCHNER: Commissioner Hauser?  
4 COMMISSIONER HAUSER: Yes.

5 MS. KIRCHNER: Chairman Herrmann?

6 CHAIRMAN HERRMANN: Yes. Okay, we'll put the

7 lawyers on the spot. We can explain it by saying we

8 had more than one attorney in the room at the same

9 time. That's what caused all the delay.

10 COMMISSIONER PERRY: Mr. Chairman, I think attorneys

11 need equal time for engineer jokes.

12 CHAIRMAN HERRMANN: Okay, we return - we left this

13 with a consideration of Table H and after legal

14 opinion and our - our own deliberations, we'll

15 return to that subject. MR. BRYAN: Do you have a motion to go

16 into open session: CHAIRMAN HERRMANN: Oh, I'm sorry -

16 yes, procedurally - there Bill Bryan is keeping us

17 straight again. We need a motion to come out of

18 closed session and back into open session.

19 COMMISSIONER HAUSER: So moved.

20 CHAIRMAN HERRMANN: Do we have a second?

21 COMMISSIONER EASLEY: Second.

22 CHAIRMAN HERRMANN: Moved and seconded. Please call

23 for the vote, Marlene.

24 MS. KIRCHNER: Commissioner Perry?

25 COMMISSIONER PERRY: Can I talk about my --

1 COMMISSIONER HARDECKE: We're coming out of closed

2 session. You need to --

3 CHAIRMAN HERRMANN: Just say yes.  
4 COMMISSIONER PERRY: Oh, yes.  
5 MS. KIRCHNER: Commissioner Hardecke?  
6 COMMISSIONER HARDECKE: Yes.  
7 MS. KIRCHNER: Commissioner Easley?  
8 COMMISSIONER EASLEY: Yes.  
9 MS. KIRCHNER: Commissioner Hauser?  
10 COMMISSIONER HAUSER: Yes.  
11 MS. KIRCHNER: Commissioner Kelly?  
12 COMMISSIONER KELLY: Yes.  
13 MS. KIRCHNER: Chairman Herrmann?  
14 CHAIRMAN HERRMANN: Yes. Okay, now we can move to  
15 Table H.  
16 COMMISSIONER PERRY: Mr. Chairman?  
17 CHAIRMAN HERRMANN: Yes?  
18 COMMISSIONER PERRY: May I interrupt?  
19 CHAIRMAN HERRMANN: Yes, sir.  
20 COMMISSIONER PERRY: May I discuss a - an issue that  
21 I'd like to reopen at this time or do you want me to  
22 wait until later?  
23 CHAIRMAN HERRMANN: Considering the hour, it might  
24 be opportune to do it now.  
25 COMMISSIONER PERRY: Mr. Chairman, I would like to

1 go back to our earlier vote and regarding effluent  
2 and water quality standards and bring up an issue

3 that we brought up on heavy metals, particularly  
4 iron and manganese and believe in light of some new  
5 information obtained directly from the EPA website, that the  
6 US Environmental Protection Agency has established  
7 national primary drinking water regulations that set  
8 mandatory water quality standards. In addition, EPA  
9 has established national secondary drinking water  
10 regulations that set non-mandatory water quality  
11 standards for fifteen contaminants. EPA does not  
12 enforce these secondary maximum contaminant levels.  
13 One of those fifteen are for odor and taste - well,  
14 actually, two of them - and that be iron and  
15 manganese. Based on that information, I would like  
16 to go back and amend what we had previously approved  
17 removing iron and manganese from the listing of  
18 heavy metals.

19 COMMISSIONER HAUSER: Second.

20 CHAIRMAN HERRMANN: Discussion?

21 MR. GALBRAITH: Just for the sake of Staff, are we  
22 clear which - which list - is this the list in  
23 7.031?

24 CHAIRMAN HERRMANN: Table A.

25 MR. GALBRAITH: Table A?

1 CHAIRMAN HERRMANN: I think that's where it is,

2 right?

3 COMMISSIONER HAUSER: It's 7.031.

4 MR. GALBRAITH: Is that right?

5 CHAIRMAN HERRMANN: Any further discussion?

6 COMMISSIONER KELLY: Now, do we know why it was left

7 on in the first place?

8 CHAIRMAN HERRMANN: Yeah, because somebody applied

9 drinking water standards for all metals and if you

10 compare those with the drinking water standards of

11 the public drinking water program with the State of

12 Missouri, there are exactly the same for all metals

13 and they - they have no iron and manganese component

14 in a controlled substances. It is only for taste

15 and odor that they are included.

16 COMMISSIONER KELLY: But does it - does it say

17 that's the only reason?

18 CHAIRMAN HERRMANN: Yes. Any other discussion? Call

19 for a question? Marlene, please?

20 MS. KIRCHNER: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes.

22 MS. KIRCHNER: Commissioner Hauser?

23 COMMISSIONER HAUSER: Yes.

24 MS. KIRCHNER: Commissioner Kelly?

25 COMMISSIONER KELLY: No.

1 MS. KIRCHNER: Commissioner Perry?



2 COMMISSIONER PERRY: Yes.

3 MS. KIRCHNER: Commissioner Hardecke?

4 COMMISSIONER HARDECKE: Yes.

5 MS. KIRCHNER: Chairman Herrmann?

6 CHAIRMAN HERRMANN: Yes. Okay, returning to Table

7 H. I - I - the proposal is to accept the Staff

8 recommendations on their assessment of the UAA's to

9 apply to Table H. It was a - was a desire, I think,

10 of the Commission in conversations of this morning

11 that we should retain the whole body contact

12 designation in twelve streams that have no - well,

13 essentially, those streams in which people submitted

14 comments that said they swim in that stream and

15 there is twelve - seventy-three, seventy-four

16 streams of that classification of which the Director

17 has a list. Additionally, there are six streams

18 which were listed as modify in the Staff

19 recommendation and people submitted letters of

20 swimming in those. Those should be retained as

21 whole body contact pending further study and review

22 by the Staff of the original proposal - proposer of

23 the UAA. Have I essentially stated what was --

24 MR. GALBRAITH: Could you - Chairman Herrmann, just

25 so I'm clear on it, did you pull those from this

1 List One that the Staff had provided?

2 CHAIRMAN HERRMANN: It was - it was your list plus  
3 an individual assessment of the letters by myself.  
4 The whole stack that you gave me. The box full.

5 COMMISSIONER KELLY: I want to make sure I  
6 understand which ones now that we're speaking of.  
7 The - the streams that are in Group Number One in  
8 this summary of comments, am I to understand that  
9 those that had the Y after them meaning that  
10 somebody did say they swam in them, those are now  
11 being included as - as whole body contact?

12 CHAIRMAN HERRMANN: Yes.

13 COMMISSIONER KELLY: But some of those require  
14 further study; is that right?

15 CHAIRMAN HERRMANN: Yes, the ones that were listed  
16 as removed and or modified and someone said, "I swim  
17 in that creek or my - I know of people that do."  
18 Then those would be retained as whole body contact.  
19

20 COMMISSIONER KELLY: Would it be possible to  
21 stipulate that that further study would - would be  
22 conducted by the Staff?

23 CHAIRMAN HERRMANN: Well, by the - by the Staff or  
24 under Staff direction.

25 COMMISSIONER KELLY: Okay, what would that mean

1     though under direction?

2     CHAIRMAN HERRMANN:   That would mean that Staff could

3     get hold of the original preparers of the UAA, tell

4     them to go out and assess this particular stream of

5     which they had done a UAA before, but, in addition,

6     to contact the people who submitted a letter that

7     said, "I swim in that stream," and get their

8     concurrence or adverse opinion.

9     COMMISSIONER KELLY:   Do we need an amendment for

10    that?

11    CHAIRMAN HERRMANN:   That, I think, would be what I

12    would be proposing as a motion.   I'm not --

13    COMMISSIONER KELLY:   That's - that's included in

14    your motion?

15    CHAIRMAN HERRMANN:   Yeah.   You have any difficulty

16    putting that motion into your words, Mr. Hauser?

17    COMMISSIONER HAUSER:   Could I just say so moved?  It

18    seems like you phrased it well.

19    CHAIRMAN HERRMANN:   As long as Marlene has the jist

20    of it and - and Ed understands it.

21    MR. GALBRAITH:   It's the other way around.  I think

22    the - the motion then is to accept the Staff

23    recommendation on Table H except for those streams

24    where a comment letter indicates swimming has

25    occurred to - to - to restore those to whole body

1 contact designation pending further review to be  
2 conducted by program staff or under their direction.  
3 Did I capture it?  
4 COMMISSIONER HARDECKE: I would like to add something to  
5 that. I think that when we go back and - and make  
6 contact with those people who made comments, we need  
7 to verify that they understand that their - when  
8 these water bodies that we remove from whole body  
9 contact that is not a lowering of present water  
10 quality standards. As you read those comment  
11 letters and people state, "We don't want you to dump  
12 raw sewage in our creek," that is definitely not a  
13 true characterization of what we're attempting in  
14 this rulemaking and I think that may have an affect  
15 on their comments as to how that creek should be  
16 classified or their use thereof.  
17 CHAIRMAN HERRMANN: Okay, by my tabulation, those  
18 comment letters that had - were received that had no  
19 change in status - eight, fourteen, fifteen,  
20 thirty-one. Thirty-one different streams that would  
21 be retained as water - whole body contact until a  
22 reconsideration of the UAA is done. Okay, did you -  
23 did you move that?  
24 COMMISSIONER HARDECKE: Yes, I did.  
25 MR. BRYAN: Technically, you already had a motion on

1 the floor. That was the River De Peres matter, so  
2 this is an amendment of that motion and you can -  
3 before we went to lunch and went into closed  
4 session, there was already a motion pending and had  
5 been seconded. This has to be an amendment of that  
6 motion or you have to dispose of the other motion  
7 first.

8 COMMISSIONER HAUSER: I'll - I'll call it an  
9 amendment to my original motion.

10 CHAIRMAN HERRMANN: Okay, do you have the original  
11 motion?

12 MR. BRYAN: Original motion was to approve Table H  
13 with the exception of removing the whole body  
14 contact designation for River De Peres.

15 COMMISSIONER PERRY: So - and so we just kind of  
16 skipped that part where we should make a motion to  
17 approve the list and then make these amendments,  
18 right?

19 MR. BRYAN: That's what I understood that --

20 COMMISSIONER HAUSER: I withdraw my original  
21 motion.

22 COMMISSIONER PERRY: I withdraw my original second.

23 CHAIRMAN HERRMANN: Now we go down to Table H,  
24 right? Thank you for your guidance there, Bill.  
25 Okay, so, as the Director helped me state, the

1 intent would be to approve the Staff recommendations  
2 as for revisions of Table H as printed, with the  
3 exception of the thirty-one streams, stream  
4 segments, on which people had said they swim and  
5 those will be held as water whole body contact  
6 streams until further study.

7 MR. GALBRAITH: And - and I think - was the motion  
8 further amended that - that -- okay.

9 COMMISSIONER HAUSER: I would also like to - are  
10 we going to get this first?

11 CHAIRMAN HERRMANN: Yeah.

12 COMMISSIONER HAUSER: Okay.

13 CHAIRMAN HERRMANN: Okay, any discussion of this  
14 motion? Any dissent? The motion passed by  
15 acclamation.

16 MR. BRYAN: Well, I think that what you're ready now  
17 to do is to take and consider your amendments to that motion -  
18 you want to approve that motion. You want to vote  
19 on it, but now you'll take the amendments by  
20 acclamation unless there's an objection.

21 CHAIRMAN HERRMANN: Okay. So we will call for the  
22 vote on the - the original motion. Marlene, please?

23 MR. BRYAN: There are amendments or do you - do you  
24 - what I understand is that you don't want to pass  
25 just Table H? You had other changes you wanted to

1 make to it?

2 CHAIRMAN HERRMANN: Yeah.

3 MR. BRYAN: Okay.

4 CHAIRMAN HERRMANN: Do you want to adopt Table H

5 yet?

6 COMMISSIONER PERRY: No.

7 CHAIRMAN HERRMANN: Okay, after the amendments,

8 okay. Now, go to the amendments - further

9 amendments.

10 COMMISSIONER HAUSER: I - I move that we amend

11 Table H by removing the whole body contact

12 designation for the River De Peres. I also move

13 that the whole body contact designation be removed

14 from Maline Creek and that the Mississippi River be

15 separated by virtue of the different characteristics

16 above and below Lock and Dam Number Twenty-seven

17 with the lower segment having the whole body contact

18 designation removed based on comments received and

19 based on the comments received.

20 CHAIRMAN HERRMANN: Any discussion on those three?

21 COMMISSIONER KELLY: Can we take those - take that -

22 those up separately for a vote?

23 CHAIRMAN HERRMANN: Yes, if you so desire we can.

24 Okay, how about you mentioned Maline Creek first or

25 River De Peres you mentioned?

1 COMMISSIONER HAUSER: River De Peres first.

2 CHAIRMAN HERRMANN: Which is a one-mile segment

3 right prior to the confluence --

4 COMMISSIONER KELLY: Excuse me, again, are those the

5 only three you're going to propose?

6 COMMISSIONER HAUSER: Yes, that I'm going to

7 propose, yes.

8 CHAIRMAN HERRMANN: Any comment on River De Peres?

9 Okay, we can --

10 COMMISSIONER KELLY: I'll take that back if you're

11 going to put just those three together, you can put

12 them back together.

13 CHAIRMAN HERRMANN: Okay, we can consider Maline

14 Creek, River De Peres, and the separation or

15 reclassification of Mississippi River. Any dissent?

16 I guess do we have a second? I'm sorry.

17 COMMISSIONER EASLEY: Second.

18 CHAIRMAN HERRMANN: Keep us all legal. Any dissent?

19 COMMISSIONER KELLY: Yes.

20 CHAIRMAN HERRMANN: You said yes?

21 COMMISSIONER KELLY: Yes.

22 CHAIRMAN HERRMANN: Okay. Would you call for the

23 vote, Marlene? Please?

24 MS. KIRCHNER: Commissioner Perry?

25 COMMISSIONER PERRY: Yes.



1 MS. KIRCHNER: Commissioner Hardecke?  
2 COMMISSIONER HARDECKE: Yes.  
3 MS. KIRCHNER: Commissioner Easley?  
4 COMMISSIONER EASLEY: Yes.  
5 MS. KIRCHNER: Commissioner Hauser?  
6 COMMISSIONER HAUSER: Yes.  
7 MS. KIRCHNER: Commissioner Kelly?  
8 COMMISSIONER KELLY: No.  
9 MS. KIRCHNER: Chairman Herrmann?  
10 CHAIRMAN HERRMANN: Yes. Further amendments, if  
11 any?  
12 COMMISSIONER PERRY: Yes, I have one. I would like  
13 to have something confirmed. I have a copy of a  
14 letter and I want to make sure that Mr. Schroeder  
15 received the letter. It - you had received this?  
16 Because I can't tell from this.  
17 MR. SCHROEDER: I'm checking with the Staff that  
18 received the letters and reviewed those and these  
19 are some of the members or our Review Committee  
20 here. So far, no one's recognizing this particular  
21 letter as having been received. We're looking at  
22 the - the list that we put together of all the  
23 letters received and it doesn't seem to appear  
24 there, either. So, I can't confirm that we've  
25 received it.

1 COMMISSIONER PERRY: I - I see that that letter that  
2 I have a copy of is either dated or signed. Can  
3 anyone confirm that that letter was submitted?  
4 (Inaudible)  
5 MR. GALBRAITH: Phil, what - what's the letter on  
6 what creek and --  
7 COMMISSIONER PERRY: It's - it's --  
8 MR. SCHROEDER: Coon Creek in Randolph County.  
9 MR. GALBRAITH: In Randolph County.  
10 (Inaudible)  
11 MR. SCHROEDER: It would appear, then, that this  
12 letter may have been received after the comment  
13 period that was set up for comments on UAA's. In  
14 other words, after August 25th.  
15 COMMISSIONER PERRY: I withdraw my motion.  
16 MR. SCHROEDER: And some of those issues that  
17 they're raising in the letter that Tom just  
18 summarized are obviously the type of issues that we  
19 were wanting to receiving and wanting to hear about  
20 and consider before we came to the meeting today,  
21 but without having reviewed this or having gone  
22 through a Review Committee --  
23 COMMISSIONER PERRY: I completely - it was my  
24 understanding that was a part of the record.  
25 MR. SCHROEDER: Okay.

1 COMMISSIONER PERRY: I withdraw my motion.

2 COMMISSIONER HAUSER: I'll move that we direct  
3 Staff to public notice those segments that we just  
4 approved - the River De Peres, Maline Creek, and  
5 the Mississippi River below Lock and Dam  
6 Twenty-seven.

7 (Inaudible)

8 MR. BRYAN: Record is closed. Rulemaking must be  
9 done on the record books.

10 CHAIRMAN HERRMANN: I'm sorry, I missed - missed a  
11 motion. I was busy.

12 COMMISSIONER HAUSER: I moved that we direct Staff  
13 to public notice those three amended - or the stream  
14 segments where we just amended the record - or  
15 amended the rule. Maline Creek, River De Peres and  
16 Mississippi River below Lock and Dam Number  
17 Twenty-seven.

18 CHAIRMAN HERRMANN: That should include a  
19 supplementary motion?

20 COMMISSIONER HAUSER: Yes and to include those  
21 where we - how many were there?

22 COMMISSIONER PERRY: Okay, hold on.

23 CHAIRMAN HERRMANN: She's withdrawn it?

24 COMMISSIONER HAUSER: Mmm-hmm.

25 COMMISSIONER PERRY: Right, I would - I would like

60

1 to add something to your public notice.

2 COMMISSIONER HAUSER: Okay.

3 COMMISSIONER PERRY: I would add - like to add to  
4 the public notice - not the rulemaking today, but to  
5 that public notice so that everybody's on public  
6 notice to remove from whole body contact recreation  
7 from Table H of 10 CSR 20-7.031 for Coon Creek, which  
8 is Water Body Identification Number 132, located in  
9 Randolph County.

10 COMMISSIONER HAUSER: I accept that amendment to  
11 my motion.

12 COMMISSIONER EASLEY: Second the motion.

13 CHAIRMAN HERRMANN: Motion seconded - moved and  
14 seconded. Do we have any discussion? Any  
15 dissension? We accept that by acclamation, Mr.  
16 Attorney? Thank you. So now we come back to - if  
17 that's all the amendments, I'm sorry. Any more? We  
18 come back to the acceptance of Table H as amended.

19 MR. GALBRAITH: Do you want me to read the motion  
20 with the amendments?

21 CHAIRMAN HERRMANN: Yeah.

22 MR. GALBRAITH: Okay. Just so we're all clear, this  
23 is the motion that I have on the table, I believe.  
24 If I understand correctly that the Commission has

25 moved to accept the Staff recommendation on Table H

61

1 minus the thirty-one water bodies where there is a  
2 claim of whole body contact swimming and that  
3 those water bodies be subject to further Staff  
4 review under Staff direction and a desire  
5 that when Staff contact commenters  
6 that they communicate accurate information about the  
7 nature of whole body contact designation. That's  
8 the motion. I have five amendments.

9 Number one is to remove whole body contact for River  
10 Des Paire. Number two is to remove whole body  
11 contact for Maline Creek. Number three is to  
12 segment the Mississippi River at Lock and Dam Number  
13 Twenty-seven with the lower segment being removed  
14 from whole body contact. I have Amendment Number  
15 Four is that those three water bodies and those  
16 removals be public noticed by Staff immediately and  
17 Number Five that Coon Creek in Randolph County be  
18 added to the public notice list for proposed removal  
19 from Table H as listed as whole body contact.

20 CHAIRMAN HERRMANN: Just one change. To be correct,  
21 it's not Lock and Dam Twenty-seven, it is Dam  
22 Twenty-seven, which is on the mainstream of the  
23 Mississippi River. The lock is on the Chain of

24 Rocks Canal and, therefore, we're only considering  
25 the dividing point as being the Dam Number

62

1 Twenty-seven as the Corps of Engineers presently  
2 does because they had previously had Lock and Dam  
3 Twenty-six at Alton as the original divider of the  
4 uncontrolled river.

5 MR. SCHROEDER: Mr. Chairman?

6 CHAIRMAN HERRMANN: Yes?

7 MR. SCHROEDER: May I ask for clarification on your  
8 motion? You mentioned thirty-one waters.

9 CHAIRMAN HERRMANN: Yeah.

10 MR. SCHROEDER: And we're back here looking at our  
11 lists and trying to determine which thirty-one that  
12 is. We want to make sure we understand clearly  
13 which waters those are. When we look at our lists  
14 and the Y's appear, it would appear that the number  
15 may be larger, so we just wanted to make sure we're  
16 on the same page with you.

17 CHAIRMAN HERRMANN: Some of the Y's were made on -  
18 on streams that the designation - or the  
19 recommendation of the Committee was retained. Those  
20 I didn't list. That's - that's not a change then.  
21 The ones that I did list or we did list is Brushy  
22 Creek, Lincoln County, Elms Springs Branch, Newton  
23 County, Little Piney River, Polaski County, Little

24 Shoal Creek, Putnam County, Peddlers Creek, Gentry  
25 County, Sandy Creek, Putnam County, Spring River,

63

1 Lawrence County, Sugar Creek, Harrison County.  
2 Those are ones of which we received no comment or  
3 swimming comment and there is no POTW discharges to  
4 those streams. The ones which the Staff has had  
5 modify in which people said they swam is Hinkson  
6 Creek, Boone County, Platte - Little Platte River,  
7 Clinton County, Little Tebo Creek, Benton County,  
8 North Fork Salt River, Adair County, Perche Creek,  
9 Boone County, Rivaux Creek, Callaway County. One  
10 you had listed as inconclusive and that's tributary  
11 to Muddy Creek in Pettis County. The sixteen which  
12 you listed as remove in which people said they swam:  
13 Bear Creek, Boone County, - I'm not French - Bois  
14 Brule Creek of Cole County, Bourbeus River, Phelps  
15 County, East Fork at Tebo Creek, Henry County,  
16 Greedy Creek, Gasconade County, Mace Creek, Andrew  
17 County, Mill Creek, Washington County, North  
18 Blackbird Creek, Putnam County, North Fork of Spring  
19 River, Barton County, Pin Oak Creek, Johnson County,  
20 South Fork of Isle du Bois, St. Genevieve County,  
21 Slater Creek, Crawford County, Walnut Creek, Johnson  
22 County, Turkey Creek, Lincoln County, West Fork at

23 Post Oak Creek, Johnson County, Wittenberg Creek,  
24 Crawford County. That's the thirty-one.  
25 MR. SCHROEDER: Okay, knowing that you have a list

64

1 and that we can perhaps get a copy, that answers my  
2 question.  
3 CHAIRMAN HERRMANN: Okay. That was your explanation  
4 of the motion?  
5 MR. GALBRAITH: Correct.  
6 CHAIRMAN HERRMANN: Okay, anyone make that motion?  
7 COMMISSIONER HAUSER: Yeah, he just reiterated it.  
8 CHAIRMAN HERRMANN: Okay, sorry. We ready for the  
9 vote? Call for the vote, please, Marlene.  
10 MS. KIRCHNER: Commissioner Hauser?  
11 COMMISSIONER HAUSER: Yes.  
12 MS. KIRCHNER: Commissioner Kelly?  
13 COMMISSIONER KELLY: Yes.  
14 MS. KIRCHNER: Commissioner Perry?  
15 COMMISSIONER PERRY: Yes.  
16 MS. KIRCHNER: Commissioner Easley?  
17 COMMISSIONER EASLEY: Yes.  
18 MS. KIRCHNER: Chairman Herrmann?  
19 CHAIRMAN HERRMANN: Yes. Thank you.  
20 COMMISSIONER PERRY: Chairman?  
21 MR. GALBRAITH: Two down and nineteen to go.  
22 COMMISSIONER PERRY: May I make a comment?



23 CHAIRMAN HERRMANN: If it's nice.

24 COMMISSIONER PERRY: Beyond making the comment - it

25 is nice, I hope. Beyond making the comment about

65

1 this engineer's handwriting being quite exceptional,

2 I would like to make a public comment that I think

3 that the Staff in this case has done a beyond any --

4 END OF TAPE TWO, SIDE B

1 COMMISSIONER PERRY: gave it to us in as best of a  
2 format as you could have and I am extremely thankful  
3 for the job that you did and the tremendous amount  
4 of organization that you put together in a very  
5 small amount of time and I thank you for it.  
6 CHAIRMAN HERRMANN: Very well stated.  
7 COMMISSIONER PERRY: And equally, I think we have  
8 seen time and time again in this meeting how well  
9 informed and how well studied our Chairman is and  
10 the fact of the hours that he put in is just I can't  
11 imagine. And we thank you for that.  
12 CHAIRMAN HERRMANN: He's also hardheaded. Okay,  
13 we'll move to some of the agenda.  
14 Becky Shannon, 319  
15 Grants.  
16 MS. SHANNON: You know, my notes say good morning,  
17 Chairman Herrmann and members of the Commission, but  
18 I'll change that to good afternoon, Chairman  
19 Herrmann and members of the Commission. I'm Becky  
20 Shannon, Chief of the Watershed Protection Section.  
21 I won't wait for the room to clear, I'll move right  
22 forward into the activity today. What I'm here to  
23 ask you for today is to approve the ranking of the  
24 319 proposals that were included in your packet.

1 This - this ranking was developed as, you know, by  
2 an interagency review committee and it's presented  
3 there for your information. 319 grant monies are  
4 used to address nonpoint sources of water pollution  
5 and what we are simply asking the Commission to do -  
6 to do today is approve the prioritized ranking.  
7 There is one thing I'd like to bring to your  
8 attention and that is on the ranking - because it  
9 may have slipped by you. On the ranking itself on  
10 Page 207 under Tab Three of your packet, you'll note  
11 at the top of the page, it says, "Based on review  
12 and scoring, Staff recommends the following projects  
13 not be funded," and that's such small type at the  
14 top of the - the page I wanted to be sure you saw  
15 that. We are recommending that Project Seventeen  
16 through Twenty-seven not be funded based on the  
17 review. That does not mean that we believe that we  
18 can fund all the other projects. As you know, we  
19 make the funding go as far as we can down that list.  
20 But we wanted to make it clear to these applicants  
21 that - that we just didn't believe these were  
22 appropriate for funding with this particular round  
23 of grants. I'd be happy to entertain any questions that  
24 you might have.

1 COMMISSIONER PERRY: I have a couple. I understand  
2 that we have both incremental and base funding and  
3 yet this line, "Cumulative funding request," going  
4 down seems to be out of one pot.

5 MS. SHANNON: That's right.

6 COMMISSIONER PERRY: Where would that line end under  
7 incremental and where would end under base?

8 MS. SHANNON: Because we didn't have EPA - because  
9 EPA wasn't able to participate in our review this  
10 year, we haven't been able to get from them their  
11 determination of incremental versus base eligibility  
12 so I can't say for certain. The other factor is  
13 that we don't know how much funding is going to be  
14 incremental versus base funding is going to be used  
15 within the Department for development of TMDL's,  
16 etc. So, I really - I'm afraid I don't have the  
17 answer to your question right now, Commissioner  
18 Perry.

19 COMMISSIONER PERRY: And you said - it's just the  
20 general scoring. I'm just curious under Number  
21 Eighteen why that was not recommended for funding.

22 MS. SHANNON: All of these that are - as you know,  
23 it is an interagency review committee and I can only  
24 speak to the fact that the score was such that it

1 ranked lower than everything above it. We saw - as  
2 we were doing the analysis, we saw there was a  
3 pretty good break between the score of Number  
4 Thirty-three - thirty-three points. This is in that  
5 third to the end column between Thirty-three and  
6 Twenty-eight, so being an old schoolteacher, just  
7 looking for the natural break for the score. The  
8 other thing is that many of these below this - this  
9 - this cutoff had a number of factors that were of  
10 concern that would require some significant  
11 revisions. Plus, we know we won't be able to fund  
12 below that so this just gives these folks an  
13 opportunity to say, "Okay, we know we're not funded  
14 with this one." We can then provide them with the  
15 comments and help them work towards their FY06  
16 applications, which they will all be invited to do  
17 to apply again for funding next year.

18 COMMISSIONER PERRY: And we

19 (BREAK IN TAPE)

20 MS. SHANNON: That was an FY03.

21 COMMISSIONER PERRY: Oh, see --

22 MS. SHANNON: Time flies.

23 COMMISSIONER PERRY: Was there - is there any money  
24 remaining from that and secondly, did we ever

1 receive an accounting of how that money was spent?

2 MS. SHANNON: We provided you with an accounting of

3 how it was to be spent. We haven't provided you

4 with a subsequent accounting, but I can certainly do

5 that. Recently, we've received a request from the

6 folks that received the bulk of that funding - the

7 Office of - the OAC, it's called. Many of those

8 projects, if not all, requested an extension of time

9 because they hadn't spent all the money and they

10 still had good work to do so we're in the process

11 now of extending many of those. At the same time,

12 some of them recognize that they didn't need as much

13 money as they expected so they de-obligated some

14 funds and will be looking at that, but that just

15 happened within the last six weeks.

16 COMMISSIONER PERRY: And will some of those funds go

17 into this pot?

18 MS. SHANNON: It could go into that pot or there are

19 other needs that - that are higher needs. For

20 example, for monitoring needs. If - that's a

21 potential, as well.

22 COMMISSIONER PERRY: I - and I would just like to

23 see some breakdown of that.

24 MS. SHANNON: We can certainly do that, yeah.

1 COMMISSIONER PERRY: Thank you.

2 MS. SHANNON: Just for those FY03, that pot of money  
3 is what you're talking about, right? That went to  
4 the Department?

5 COMMISSIONER PERRY: That's what I want.

6 MS. SHANNON: Sure. Happy to. Anything else?

7 COMMISSIONER EASLEY: Could you review with us some  
8 of the facts - major factors that you take into  
9 consideration in your scoring?

10 MS. SHANNON: Overall? Sure. The - the blue sheet  
11 there on top. One of the factors, of course, is -  
12 is simply whether the - the project addresses a  
13 nonpoint source - whether it's an eligible project  
14 and that's the primary consideration. Whether it's  
15 a - we also look at whether it's a 303d listed water  
16 that addresses a nonpoint source of pollution. If  
17 there's a nonpoint source reason for the 303d  
18 listing, that's a factor that we consider and if the  
19 project is going to address that particular  
20 pollutant of concern, then we would give that a  
21 little more weight. We look at the water quality  
22 problem. Does it describe an actual threat or  
23 problem, whereas is this something where there's not an  
24 actual problem? Does it explain the need? We look

1 at whether there's an actual need for the project

2 being described. We look at whether the objectives  
3 are appropriate, specific, whether they're  
4 measurable or realistic. We look at whether it's a  
5 watershed project versus something else and whether  
6 the watershed is a manageable size with it's - it  
7 would probably - would probably feel differently  
8 about a project that was going to treat the entire  
9 Missouri River sub-basin versus smaller fourteen  
10 digit hydrologic unit. We look at whether the  
11 objectives match up with the goals. Are they really  
12 going to achieve what they say they're going to  
13 achieve? We look at the evaluation process. Are  
14 they going to be looking at the right things to  
15 figure out how they've done? Are they measuring  
16 what they say they're going to be doing? We look at  
17 whether they have the right partners at the table.  
18 If they're going to be looking at something to do  
19 with Conservation. Have they got conservation at  
20 the table? If they - one year, we had a project  
21 that involved stream teams and the Stream Team Program  
22 had not previously been contacted, so that affected  
23 that proposal. We also look at the letter of  
24 support that come with the proposal to see if the

1 folks are really behind it. We look at whether the  
2 budget is reasonable, appropriate, eligible. If



3   there's proper match.  If it's an information  
4   project, is it appropriate?  Do they have the right  
5   components?  Are the practices appropriate and  
6   adoptable?  We look at whether it's locally led.  We  
7   have a definite preference for locally led projects  
8   and that's stated in the request for proposals.  And  
9   we look at - and this is a significant factor.  If  
10  there's a higher likelihood of success because it has  
11  the key participants, because it has the sponsors  
12  that can be accountable, the right sponsors that can  
13  do the job they say they're going to do, whether  
14  they have the identified and got the commitment from  
15  the - the partners, if they've done a good job with  
16  their application and given good information and if  
17  they've looked at partnering or building on other  
18  things that are going on in the watershed.  Does  
19  that help?

20  COMMISSIONER EASLEY:  That helps.  Thanks.

21  MS. SHANNON:  Anything else?

22  CHAIRMAN HERRMANN:  With nothing else, there's no  
23  other comments or questions, the Chair would  
24  entertain a motion to accept Staff's recommendation

1   on the rankings.

2   COMMISSIONER EASLEY:  So moved.

3 CHAIRMAN HERRMANN: Second? Do we have a second?  
4 COMMISSIONER KELLY: I second the motion.  
5 CHAIRMAN HERRMANN: Moved and seconded. Please call  
6 for the vote, Marlene.  
7 MS. KIRCHNER: Commissioner Kelly?  
8 COMMISSIONER KELLY: Yes.  
9 MS. KIRCHNER: Commissioner Perry?  
10 COMMISSIONER PERRY: Yes.  
11 MS. KIRCHNER: Commissioner Easley?  
12 COMMISSIONER EASLEY: Yes.  
13 MS. KIRCHNER: Commissioner Hauser?  
14 CHAIRMAN HERRMANN: He stepped out.  
15 MS. KIRCHNER: Chairman Herrmann?  
16 CHAIRMAN HERRMANN: Yes. Okay.  
17 COMMISSIONER HARDECKE: Do I get to vote?  
18 CHAIRMAN HERRMANN: You missed Commissioner  
19 Hardecke.  
20 MS. KIRCHNER: I'm sorry.  
21 CHAIRMAN HERRMANN: You abstained, right?  
22 COMMISSIONER HAUSER: You didn't register.  
23 COMMISSIONER HARDECKE: You think that would get me  
24 out of here?

10

1 CHAIRMAN HERRMANN: Okay, moving to Tab Four,  
2 Revisions of Missouri Nonpoint Source Management  
3 Plan. Becky?

4 MS. SHANNON: Thank you. The Nonpoint Source  
5 Management Plan is a state-wide document addressing  
6 how the State is going to deal with nonpoint source  
7 issues. The Commission has approved the plan. In  
8 the past and each year, we make some revisions to it  
9 and come back to the Commission with a request for  
10 you to review those revisions. This year, we - as  
11 each year, we've looked at the assessment section  
12 and made revisions to that as well as the funding  
13 section. Also this year, we updated the plan to  
14 reflect the - include the 2002 303d list replacing  
15 the former 1998 list. Another substantial thing we  
16 did this year was to work with Bill Bryan to update  
17 the legal certification, which is a - a memo from  
18 the Attorney General's Office stating that the  
19 Department of Natural Resources does has authority  
20 to carry out the provision of - of Section 319. If  
21 you have any specific questions about what's  
22 included, I'd be happy to answer those.

23 COMMISSIONER PERRY: Just one. I'd like to refer  
24 you to Page - it's the second one because they all -

11

1 what would be in our packet is Page Two-twelve, but  
2 it's the second page of your Ten of Fourteen.

3 MS. SHANNON: Got it.

4 COMMISSIONER PERRY: It says, "In addition to  
5 priority categories, the state is required to identify  
6 priority waters in Missouri. The priority waters  
7 are waters on the current 303d list or waters on  
8 past 303d lists that are still rated as impaired.  
9 Would you explain that and why did you make that  
10 change?

11 MS. SHANNON: I wish Phil or Ann was still here  
12 because they understand it better than I do. As I  
13 understand it, those are waters for which a TMDL has  
14 been developed, but they're still on the list  
15 because they haven't met water quality standards,  
16 but the TMDL is done. That's my understanding. I  
17 may be wrong.

18 COMMISSIONER PERRY: Okay, I - my concern is that  
19 we've done another 303d list in which there were  
20 some waters removed and my concern is that some of  
21 those were removed for the fact that they were no  
22 longer impaired and why would we still want them as  
23 priority?

24 MS. SHANNON: Right. This is - these are ones that

12

1 would still - that would be Category Four or  
2 Category 4B on the list itself, so they wouldn't be  
3 ones that have been on the '98 list and are off the  
4 list because they're cleaned up. That would not

5 include those.

6 COMMISSIONER PERRY: That - that was the sort of

7 clarification I needed.

8 MS. SHANNON: Okay. Anything else?

9 CHAIRMAN HERRMANN: Do we have to approve Staff

10 recommendation?

11 MS. SHANNON: I would ask that you approve the

12 revisions to it, yes.

13 CHAIRMAN HERRMANN: Chair would entertain a motion

14 to accept Staff recommendation.

15 COMMISSIONER PERRY: So moved.

16 COMMISSIONER EASLEY: Second.

17 CHAIRMAN HERRMANN: Moved and seconded. Please call

18 for the vote, Marlene.

19 MS. KIRCHNER: Commissioner Hardecke?

20 COMMISSIONER HARDECKE: Yes.

21 MS. KIRCHNER: Commissioner Perry?

22 COMMISSIONER PERRY: Yes.

23 MS. KIRCHNER: Commissioner Easley?

24 COMMISSIONER EASLEY: Yes.

13

1 MS. KIRCHNER: Commissioner Hauser? Commissioner

2 Kelly?

3 COMMISSIONER KELLY: Yes.

4 MS. KIRCHNER: Chairman Herrmann?

5 CHAIRMAN HERRMANN: Yes.

6 MS. SHANNON: Thank you.

7 CHAIRMAN HERRMANN: Thank you. Because of prior  
8 commitments, we are going to step out of the line -  
9 limelight of our agenda and go to enforcement actions  
10 and call on Kevin Mohammadi. Mohammadi - I'm sorry.  
11

12 MR. MOHAMMADI: Thank you, Mr. Chairman. There were  
13 two matters that we will be recommending to the  
14 Commission for referral to the Office of Attorney  
15 General's Office. The first item is Lincoln County  
16 Utility Company. Lincoln County Utility Company  
17 owns and operates a three-cell waste water treatment  
18 lagoon that serves three subdivisions in the Lincoln  
19 County. The company has failed to comply with the  
20 Schedule of Compliance in the permit to upgrade the  
21 lagoon and has chronically exceeded effluent limits.  
22 The Department's Outreach and Assistance Center has  
23 attempted to work with the company to complete a  
24 user rate analysis; however, to date, the user rate

14

1 analysis is incomplete. The company has continued  
2 to have bypassed from its collection system and have  
3 impacted tributary to Cuivre River. The company  
4 also has failed to inform the Department of the  
5 bypasses and correct them. Despite the Department's

6 repeated effort to work with the company to correct  
7 this violation over the past five years, violations  
8 continue to occur. Therefore, Staff recommends the  
9 matter to be referred to the Office of Attorney  
10 General's Office for appropriate legal action.  
11 CHAIRMAN HERRMANN: Can you tell me the general  
12 location of this? What city or town or whatever and  
13 what's the stream of discharge?  
14 MR. MOHAMMADI: It's unnamed tributary to Cuivre  
15 River.  
16 CHAIRMAN HERRMANN: Okay. Well, that's alright.  
17 We'll get that later, Kevin. That's my --  
18 MR. MOHAMMADI: Alright, I can do that.  
19 CHAIRMAN HERRMANN: Is anyone here from Lincoln  
20 County Utilities? The Chair - excuse me. The Chair  
21 would entertain a motion relative to referral of the  
22 Lincoln County Utility Company to the Attorney  
23 General's Office?  
24 COMMISSIONER EASLEY: I move that the Commission

15

1 refer the matter of Lincoln County Utilities Company  
2 to the Office of Attorney General.  
3 COMMISSIONER KELLY: Second the motion.  
4 CHAIRMAN HERRMANN: Is that a second?  
5 COMMISSIONER KELLY: Yes, I seconded the motion.

6 CHAIRMAN HERRMANN: Oh, I'm - I'm sorry. Okay, call  
7 for the vote, Marlene, please?  
8 MS. KIRCHNER: Commissioner Perry? Yes. Commissioner  
9 Easley?  
10 COMMISSIONER EASLEY: Yes.  
11 MS. KIRCHNER: Commissioner Hauser?  
12 COMMISSIONER HAUSER: Yes.  
13 MS. KIRCHNER: Commissioner Kelly?  
14 COMMISSIONER KELLY: Yes.  
15 MS. KIRCHNER: Commissioner Hardecke?  
16 COMMISSIONER HARDECKE: Yes.  
17 MS. KIRCHNER: Chairman Herrmann?  
18 CHAIRMAN HERRMANN: Yes.  
19 MR. MOHAMMADI: The next matter is Fred Weber, Inc.  
20 Fred Weber, Inc. owns and operates a limestone  
21 company located in St. Charles County known as the  
22 O'Fallon Quarry. On three occasions in 2003,  
23 discharges from quarry exceeded Weber's permit of  
24 effluent limitations for total suspended solids.

16

1 The Department Staff investigated the receiving  
2 stream and observed several thick deposits of lime  
3 and crushed limestone for over a half-mile below the  
4 quarry. The Department issued notice of violation  
5 to Weber on November, 2003, and ordered them to  
6 cease discharging until they could meet their permit



7 effluent limits. Earlier this year in April, 2005,  
8 discharge from the quarry exceeded Weber's permit  
9 effluent limitation for total suspended solids.  
10 Staff recommends referral of this matter for the  
11 Office of Attorney General's Office.  
12 CHAIRMAN HERRMANN: Anyone here from Fred Weber,  
13 Co.? Bearing none, Chair would entertain a motion  
14 relative to referral.  
15 COMMISSIONER PERRY: I move that - I move that the  
16 Commission refer the matter of Fred Weber, Inc. to  
17 the Attorney General's Office.  
18 COMMISSIONER EASLEY: Second.  
19 CHAIRMAN HERRMANN: Moved and seconded. Please call  
20 for the vote, Marlene.  
21 MS. KIRCHNER: Commissioner Perry?  
22 COMMISSIONER PERRY: Yes.  
23 MS. KIRCHNER: Commissioner Easley?  
24 COMMISSIONER EASLEY: Yes.

17

1 MS. KIRCHNER: Commissioner Hauser?  
2 COMMISSIONER HAUSER: Yes.  
3 MS. KIRCHNER: Commissioner Kelly?  
4 COMMISSIONER KELLY: Yes.  
5 MS. KIRCHNER: Commissioner Hardecke?  
6 COMMISSIONER HARDECKE: Yes.

7 MS. KIRCHNER: Chairman Herrmann?

8 CHAIRMAN HERRMANN: Yes.

9 MR. MOHAMMADI: Thank you, Mr. Chairman.

10 CHAIRMAN HERRMANN: Thank you, Mr. Mohammadi. Let's

11 return back to the point of the agenda booklet. Tab

12 Five is the City of Wentzville SRF loan application.

13

14 MR. KIRBY FINDERS: Mr. Chairman, Commissioners.

15 The City of Wentzville is listed in the fiscal year

16 2006 Clean Water SRF intended use plan as a fundable

17 carryover project. Currently, they have an eligible

18 loan amount of 8.7 million dollars. They are

19 requesting to increase that amount to twenty

20 million, one hundred fifty-four thousand. The

21 project was originally - is designed to be

22 constructed in four phases. Phase One originally

23 was planned to be upgrades to the waste water

24 treatment plant and an expansion of the capacity.

18

1 They would now like to construct the ultraviolet

2 disinfection facilities and the new headworks. This

3 would increase the cost to twenty million, one

4 hundred fifty-four thousand. As funds are currently

5 available, the program recommends the Commission

6 approve the increase in the eligible loan amount to

7 the twenty million, one hundred fifty-four thousand.

8

9 CHAIRMAN HERRMAN: I guess I have a concern about  
10 this one and four following it. The difference  
11 between eight million and twenty million is  
12 significant and substantial. The requirements of  
13 our regulations for grants are that they submit a  
14 facility plan and a facility plan should spell out  
15 in detail and an acceptability to the Staff what  
16 they propose to do and the cost for doing that. And  
17 my first question is, do we have anything like a  
18 facility plan for this increase of - of twelve  
19 million dollars, which is like two and a half times  
20 the - the present?

21 MR. FINDERS: The scope of the work is in the  
22 facility plan. I do not believe it's the - dollars  
23 are itemized, but the engineer's not here to - to  
24 consult.

19

1 CHAIRMAN HERRMANN: Well, I - I'm concerned about  
2 the ability of Staff to recommend to the Commission  
3 an allocation of funding up to that extent without  
4 having a - a reviewable and reviewed facility plan.

5 MR. GALBRAITH: Has the facility plan been reviewed?

6 MR. FINDERS: Yes, it has.

7 MR. GALBRAITH: Okay.

8 CHAIRMAN HERRMANN: There's the answer man.

9 MR. DOUG GARRETT: We had worked closely with the  
10 City of Wentzville and their consultant on this  
11 project. They had originally phased it to take into  
12 account the rapid growth of the Wentzville area.  
13 The facility plan in its entirety was FONSIed  
14 several months ago and they have been rapidly  
15 proceeding with design in order to meet the growing  
16 demands from the City. The aspects of the project  
17 that they want included in this first phase, if you  
18 will, would accommodate the construction plans of  
19 the City and, based on comments from their design  
20 consultant to in the long term reduce potential  
21 construction costs.

22 CHAIRMAN HERRMANN: What's their point of discharge?

23 MR. GARRETT: Pardon me?

24 CHAIRMAN HERRMANN: What's their point of discharge?

20

1 What stream?

2 MR. GARRETT: It is - I can't remember the  
3 name of the stream, but it's approximately two miles  
4 from the --

5 CHAIRMAN HERRMANN: That's not (inaudible), is it?

6 MR. GARRETT: No. No, it's not the  
7 (inaudible) Creek.

8 CHAIRMAN HERRMANN: And it's not far enough down to

9 be Dardene.

10 COMMISSIONER PERRY: It's Cuivre. I have a  
11 question. With the change of twelve million  
12 dollars, what does it do to everyone else on the  
13 list?

14 MR. GARRETT: Well, we looked at that before  
15 we - as we were preparing this briefing. The funds  
16 that are still uncommitted in the SRF account are  
17 approximately forty million dollars at this point  
18 and that would be, you know, assuming that this  
19 increase was granted.

20 CHAIRMAN HERRMANN: So it's not going to impact  
21 anybody down the line waiting for money?

22 MR. GARRETT: No, sir.

23 CHAIRMAN HERRMANN: Okay. Anything else?

24 COMMISSIONER EASLEY: Well, you have here 'as funds

21

1 are available.' That indicates that they're not  
2 available now or if so, when would they?

3 MR. GARRETT: Yes, the funds are available to  
4 commit to the project.

5 CHAIRMAN HERRMANN: Any other questions? Bearing  
6 none, Chair would entertain a motion relative to the  
7 application for additional funding for the City of  
8 Wentzville.

9 COMMISSIONER HAUSER: I move we approve the  
10 additional funding for the City of Wentzville.  
11 COMMISSIONER KELLY: Second the motion.  
12 CHAIRMAN HERRMANN: Moved and seconded. Please call  
13 for the vote, Marlene.  
14 MS. KIRCHNER: Commissioner Easley?  
15 COMMISSIONER EASLEY: Yes.  
16 MS. KIRCHNER: Commissioner Hauser?  
17 COMMISSIONER HAUSER: Yes.  
18 MS. KIRCHNER: Commissioner Kelly?  
19 COMMISSIONER KELLY: Yes.  
20 MS. KIRCHNER: Commissioner Hardecke?  
21 COMMISSIONER HARDECKE: Yes.  
22 MS. KIRCHNER: Commissioner Perry?  
23 COMMISSIONER PERRY: Yes.  
24 MS. KIRCHNER: Chairman Herrman?

22

1 CHAIRMAN HERRMANN: Yes. Thank you, gentlemen.  
2 City of Rich Hill, Mark Buersmeyer.  
3 MR. BUERSMEYER: Thank you, Mr. Chairman.  
4 CHAIRMAN HERRMANN: Yes, sir.  
5 MR. BUERSMEYER: In 2001, we entered into a nine  
6 hundred thousand dollar interim direct loan with the  
7 City of Rich Hill to upgrade their waste water  
8 treatment plant. They had had some problems with  
9 their plant at the time and had been referred to our

10 compliance and enforcement section. They've  
11 completed all those things and, at the time, the  
12 reason we didn't - didn't give them a long term loan  
13 is we wanted to have a little bit more oversight  
14 over the situation. Well, that loan's maturing now.  
15 It matures on September 20th. They've been making  
16 payments, but their current balance, if we didn't do  
17 anything, they'd have a - have a balloon payment of  
18 seven hundred forty-seven thousand and some dollars  
19 due on September 20th. So what we propose, and bond  
20 counsel's worked on this, is to give them a new loan  
21 for seven hundred sixty-three thousand eight hundred  
22 four dollars. It would run for sixteen and a half  
23 years. We wouldn't give them the full twenty, we  
24 would just give them out to what they would have

23

1 originally had. Seven hundred forty-seven thousand  
2 and some dollars would pay off the existing loan.  
3 Sixteen thousand and some dollars would help  
4 establish a reserve fund. In addition, the City's  
5 going to - has accumulated fifty thousand dollars of  
6 their own money to establish the reserve fund so  
7 we're going to have sixty-six thousand and some in a  
8 reserve fund as a security for the loan. So, we're  
9 really not loaning them any additional money. The

10 sixteen thousand is going to be repaid October 1st  
11 just as it would have been. The reason the bond  
12 counsel set this up this way is they had some monies  
13 in their normal principal account that they're  
14 paying into each month so he's letting them use  
15 sixteen thousand - he's increasing the loan sixteen  
16 - by sixteen thousand, but that's just to help -  
17 help them fund up the reserve fund. We'll get that  
18 back the first of October. So, basically, we're not  
19 - we're not really giving them any more money.  
20 We're just going to convert it to a long term loan with  
21 your approval and we had always intended to do this.  
22 We just didn't do it at the very beginning because  
23 we felt like we wanted to have a little more  
24 oversight over this particular loan and wanted to

24

1 let it play itself out for a few years and the  
2 City's in pretty good shape. They've done a good  
3 job on their reporting so, at this time - well, and  
4 obviously, they - we have to extend it and we just  
5 thought they'd - they'd be a better fit for a long  
6 term direct loan as opposed to SRF so we'd ask for  
7 the Commission's approval to convert this interim.  
8 It's actually an amendment. It's not going to be a  
9 new loan - to amend the existing loan to a long term  
10 loan.



11 CHAIRMAN HERRMANN: Okay, any questions of Mr.  
12 Buersmeyer? Bearing none, the Chair would entertain  
13 a motion relative to the City of Rich Hill.  
14 COMMISSIONER HAUSER: I move we extend - vote to  
15 extend the interim direct loan to a long term direct  
16 loan.  
17 COMMISSIONER HARDECKE: Second.  
18 CHAIRMAN HERRMANN: Moved and seconded. Please call  
19 for the vote, Marlene.  
20 MS. KIRCHNER: Commissioner Easley?  
21 COMMISSIONER PERRY: He stepped out.  
22 MS. KIRCHNER: Commissioner Hauser?  
23 COMMISSIONER HAUSER: Yes.  
24 MS. KIRCHNER: Commissioner Kelly?

25

1 COMMISSIONER KELLY: Yes.  
2 MS. KIRCHNER: Commissioner Hardecke?  
3 COMMISSIONER HARDECKE: Yes.  
4 MS. KIRCHNER: Commissioner Perry?  
5 COMMISSIONER PERRY: Yes.  
6 MS. KIRCHNER: Chairman Herrmann?  
7 CHAIRMAN HERRMANN: Yes.  
8 MR. BUERSMEYER: Thank you.  
9 CHAIRMAN HERRMANN: Thank you. Tab Seven, small  
10 borrower's loan for Cowgill for sewer project.

11 Carrie Schulte.  
12 MS. SCHULTE: Good afternoon, Commissioners. We  
13 recently received a - an application for a small  
14 borrower's loan. Those loans are given to  
15 communities with the population of less than a  
16 thousand and the maximum amount they can borrow is a  
17 hundred thousand. Cowgill, the City of Cowgill,  
18 population two hundred forty-seven, they are  
19 requesting a hundred thousand dollar loan to - so  
20 that they have enough money to complete their  
21 project. They're already receiving CDBG money at  
22 five hundred thousand. They're receiving a rural -  
23 rural development grant and rural development loan,  
24 five hundred fifty thousand and two hundred

26

1 thousand. And they also have a city cash match on  
2 hand at ten thousand, but they - they'd like - they  
3 sent in applications to complete their funding for  
4 their project. What they're trying to do is  
5 construct sanitary sewer systems throughout the  
6 entire city and also - and plus construct a  
7 three-cell lagoon system.

8 CHAIRMAN HERRMANN: Okay, any questions of Ms.  
9 Schulte? The Chair would entertain a motion  
10 relative to City of Cowgill.

11 COMMISSIONER HAUSER: I move we approve the small

12 borrower's loan for the City of Cowgill.  
13 COMMISSIONER KELLY: Second the motion.  
14 CHAIRMAN HERRMANN: Moved and seconded. Please call  
15 for the vote, Marlene.  
16 MS. KIRCHNER: Commissioner Hauser?  
17 COMMISSIONER HAUSER: Yes.  
18 MS. KIRCHNER: Commissioner Easley?  
19 COMMISSIONER EASLEY: Yes.  
20 MS. KIRCHNER: Commissioner Hardecke?  
21 COMMISSIONER HARDECKE: Yes.  
22 MS. KIRCHNER: Commissioner Kelly?  
23 COMMISSIONER KELLY: Yes.  
24 MS. KIRCHNER: Commissioner Perry?

27

1 COMMISSIONER PERRY: Yes.  
2 MS. KIRCHNER: Chairman Herrmann?  
3 CHAIRMAN HERRMANN: Yes. City of Ravenwood -  
4 Carrie Schulte?  
5 MS. SCHULTE: Yeah, again, it's a small borrower's  
6 application received recently. Our intended use  
7 plan - the current intended use plan shows that we  
8 have enough money to fund both these projects - both  
9 these loans - these requests. Again, it's for a  
10 hundred thousand dollars to the City of Ravenwood.  
11 Currently, they have a two-cell lagoon and they want

12 to increase that to a three-cell lagoon and remove  
13 sludge and add lines and fix some of the transfer  
14 structures. They're - they're receiving a special  
15 EPA appropriations grant for a hundred eighty-two  
16 thousand dollars - a little more than that. They  
17 also have some city contribution of two hundred  
18 sixty thousand dollars, but they - they need our  
19 hundred thousand dollars to complete the project.  
20 CHAIRMAN HERRMANN: Okay. Tell me what the  
21 population of Ravenwood is?  
22 MS. SCHULTE: It's four hundred forty-eight.  
23 CHAIRMAN HERRMANN: 448. Okay. Any questions of  
24 Ms. Schulte? Bearing none, the Chair would

28

1 entertain a motion.  
2 COMMISSIONER EASLEY: I move we approve the request  
3 of the City of Ravenwood.  
4 COMMISSIONER HAUSER: Second.  
5 CHAIRMAN HERRMANN: Moved and seconded. Please call  
6 for the vote, Marlene.  
7 MS. KIRCHNER: Commissioner Perry?  
8 COMMISSIONER PERRY: Yes.  
9 MS. KIRCHNER: Commissioner Kelly?  
10 COMMISSIONER KELLY: Yes.  
11 MS. KIRCHNER: Commissioner Hardecke?  
12 COMMISSIONER HARDECKE: Yes.

13 MS. KIRCHNER: Commissioner Easley?  
14 COMMISSIONER EASLEY: Yes.  
15 MS. KIRCHNER: Commissioner Hauser?  
16 COMMISSIONER HAUSER: Yes.  
17 MS. KIRCHNER: Chairman Herrmann?  
18 CHAIRMAN HERRMANN: Yes. Ozark Clean Water Company.  
19  
20 MS. SCHULTE: Yes, okay, let me just introduce this  
21 a little bit. Ozark Clean Water Company has sent  
22 the State revolving fund - Clean Water State  
23 revolving fund proposal to administer an onsite loan  
24 program. Many of the states that are funded through

29

1 Clean Water SRF have an onsite loan program.  
2 Missouri doesn't and we are really in need of having  
3 a program like this and have worked, oh, for several  
4 weeks - probably several months with OCWC and  
5 they've been very responsive to our questions and  
6 really would like to see a program like this begin  
7 in Missouri. So, I think - is it Dave? Dave, were  
8 you going to do the presentation? Rick Helms? Rick  
9 Helms is here to do the presentation.  
10 CHAIRMAN HERRMANN: Thank you.  
11 MR. GALBRAITH: And while they're - while they're  
12 setting up, I'll add to what Carrie said. We had

13 put this on an agenda last Commission and time  
14 precluded us from getting to it even though I had  
15 several conversations with Commissioners about it  
16 and I took some of those concerns and comments back.  
17 I've been working with Dave, Mr. Casaletto. What  
18 you have in - in the packet today is a revised  
19 concept document. I think it's very good. I think  
20 it's a solid program and one that I think we'd be  
21 eager to work with them on and get off the ground.  
22 So, with that said, I'll let them do the - do the  
23 presentation.  
24 MR. HELMS: Mr. Chairman and Commissioners, my name

30

1 is Rick Helms. I'm one of the Directors for Ozark  
2 Clean Water Company and we've got a little  
3 presentation to maybe show you a little bit about  
4 what the - the need is and how we're trying to solve  
5 that need in the Southwest Missouri area. We're  
6 primarily working in Stone, Taney, Christian -  
7 around Table Rock Lake area is our primary of  
8 emphasis. We - it is a non-for-profit sewer utility  
9 company - utility company. There are definite needs  
10 that are unique to our area. We have very  
11 challenging environment. Thin soils underlaying by  
12 karst topography. Very difficult areas to work in.  
13 We have a lot of outdated, unpermitted systems

14 around Table Rock Lake. We have public health risks  
15 that are associated with failing individual onsite  
16 systems. You can see by what these dogs are playing  
17 in and they're getting ready to go in the house and  
18 play with the kids. Lots of visible impacts from -  
19 from homes with really marginally functioning  
20 treatment systems. And, again, what you're seeing  
21 here is the affect of a - a discharge in karst  
22 topography. That's the real world right there.  
23 Same thing going on here. There's a home up there.  
24 Dave refers to this as his poopsicle photograph. We

31

1 do feel like we have a good, viable solution here  
2 and what you're seeing now are slides of facilities  
3 that we actually have completed improvements on and  
4 facilities that are now owned, operated, managed and  
5 maintained by Ozark Clean Water Company. This is  
6 not a theoretically proposed organization. We're  
7 out there working today providing solutions. This  
8 is a - a failed septic tank from a nice lakefront  
9 home. It's about a hundred fifty feet to Table Rock  
10 Lake and we didn't damage that septic tank to that  
11 extent getting out of that hole. You can see what  
12 kind of conditions there are. And individually,  
13 these problems are not huge. They're not a - a huge

14 impact on the lake taken one at a time, but when you  
15 add up the - the small impacts multiplied by the  
16 thousands of units that are installed around Table  
17 Rock Lake, the impact really is significant. This -  
18 what you're looking at right here is an actual  
19 recirculating sand filter that was constructed in  
20 the 1980's. The owner promptly died. Nobody was in  
21 place to manage and maintain this recirculating sand  
22 filter. This is a pump station that was tributary  
23 to the recirculating sand filter. Again, nobody -  
24 no responsible entity to maintain it. Pump station

32

1 fails, raw sewage overflows. This is that same  
2 facility today. It now belongs to Ozark's Clean  
3 Water Company. We've completely rehabilitated that  
4 sand filter, installed a big lateral field. We  
5 don't have a discharge at Table Rock Lake there any  
6 more and these homes - and these homeowners are  
7 providing - being provided with their appropriate  
8 level of waste water collection treatment services.  
9 Again, that's the same unit. This is a four-home  
10 cluster. There are four homes that were under a - a  
11 common developer. They decided to install a - a  
12 treatment and drip irrigation system. This is a  
13 drip irrigation system being installed. This is it  
14 as it's - this is further in the construction. This



15 is the treatment system prior to the drip  
16 irrigation. These are fabric filters. They work a  
17 lot like a trickling filter and they were installed  
18 and they provide the treatment prior to the drip  
19 irrigation and why do you need to manage a system?  
20 Well, these things floated. There's not a  
21 management entity responsible for getting these  
22 reinstalled. That's why Ozark's Clean Water Company  
23 needs to be present in part of the solution here.  
24 You have four homeowners there and nobody knows

33

1 who's responsibility it is to make the necessary  
2 repairs to this system. This is a single family  
3 home on the front of Table Rock Lake. Rusted out  
4 metal septic tank under their deck. This is a - a  
5 discharge from their lateral field that is literally  
6 going right to Table Rock Lake. It's about fifteen  
7 feet, probably, from the lake. It's just more of  
8 the same. This is what we replaced that system  
9 with. Again, it was a rusted out metal five hundred  
10 gallon septic tank. Now, we have a septic tank and  
11 appropriate treatment. That's it and drip  
12 irrigation again - this is that same site. That's  
13 how close we are to Table Rock Lake and this is what  
14 it looks like today. We're out there doing these

15 things. And, again, these are actual customers.  
16 These facilities are owned and operated by Ozark  
17 Clean Water Company. This is a recirculating sand  
18 filter. The liner failed on it. It's on a - a  
19 medium sized subdivision on Table Rock Lake,  
20 approximately fifty lots. There's about twenty-five  
21 homes on it. These twenty-five existing homes  
22 elected to join Ozark's Clean Water Company, again,  
23 because they wanted to have their system properly  
24 managed and maintained. Another two-home cluster.

34

1 These - the two homes - this home was above the one  
2 you saw in the previous slide. We have treatment  
3 and then the waste water from those two homes is  
4 irrigated in this - at this small area in there.  
5 So, we're - we're trying to avoid discharges to  
6 Table Rock Lake where we can. An existing home with  
7 septic tank, right here, we installed treatment  
8 there and have been measuring the affect on the  
9 lateral field that serves this home and they were -  
10 there was water standing in the lateral field and  
11 after we put in treatment, that water level has  
12 reduced greatly. We're in the process of - we  
13 completed engineering and have a construction  
14 permit for treatment system to serve this  
15 restaurant. It's in the Shell Knob area. That's

16 what they have right now. It was a failed and  
17 experimental wood chip type treatment system and  
18 just a - it's a real problem there. And what we're  
19 going to do is put in treatment and then drip  
20 irrigate on this property right here. This is at a  
21 home in the Shell Knob area and, again, you can kind  
22 of see what the - what kind of conditions we're  
23 dealing with. A lot of rock, very thin soil, septic  
24 tank, peat filter for treatment and then drip

35

1 irrigation in the man's front yard. This is a  
2 proposed project. It's one that we'd - we would  
3 very much like to access the SRF funds for. It's  
4 about a twenty-five unit trailer park and that's the  
5 treatment right now. And you can't see Table Rock  
6 Lake, but it's about right there. This is an  
7 unpermitted lagoon. This is another little resort.  
8 They have septic tanks behind each one of the - the  
9 little cabins and we're going to - we have a  
10 construction permit to install a recirculating sand  
11 filter with open discharge to Table Rock Lake. Just  
12 another view of the same spot. We have a lot of  
13 other projects that are in progress and these are  
14 all - these three are all voluntary developers that  
15 have decided that - that they don't want to be in

16 the sewer business because it's a whole lot easier  
17 to get in the sewer business than it is to get out.  
18 They've decided that they would have Ozark's Clean  
19 Water Company be their solution. Construction  
20 permits have been issued for all of these units and  
21 they will - they're actually undergoing construction  
22 right now. So, as again, we're moving along doing  
23 things that we - that's not theory. The Horizon  
24 Trailer Park, that's the little trailer park that I

36

1 told you we'd like to access the SRF funds to help  
2 with that project. There - an unsewered school that  
3 we've been talking with about doing a project for  
4 them. It's Kirbyville school. They built the  
5 school and didn't put in a waste water treatment  
6 system based on the theory that the Taney County  
7 Sewer District would be coming in front of the  
8 school pretty quick with a sewer main and that's  
9 been seven years now and they're still pumping and  
10 it doesn't look like that sewer main is going to be  
11 coming in any time in the future. Another small  
12 school. It's in eastern Taney County. Single cell  
13 lagoon and the discharge from that lagoon is  
14 suspected to be causing problems with a little  
15 endangered species in one of the caves there. The  
16 cave snail. Why are we really here? Well, water

17 quality protection requires advanced waste water  
18 treatment systems. In our - in our area, you have  
19 to have advanced secondary treatment and phosphorous  
20 removal and advanced waste water treatment systems  
21 require professional management and individuals,  
22 developers, and home owners associations - they're  
23 not professional managers. They're just not. The  
24 advanced systems that we're installing, they really

37

1 do work. You folks are more technically astute than  
2 most. I'm sure you're well aware of that. Our  
3 mission is to provide, again, professional  
4 operation, maintenance, management and ownership of  
5 individual and cluster of waste water treatment  
6 disbursal systems now and on out. What we need to  
7 accomplish that mission, we have to control the  
8 system. We have to be able to generate sufficient  
9 revenue to provide operation maintenance,  
10 replacement. That means we have to own the systems.  
11 That means that we actually have to have a utility  
12 - a viable utility operation and that's what the  
13 Ozark's Clean Water Company is. Right now, Dave  
14 Casaletto's Director. Pete Short is very  
15 successful local developer, custom home builder.  
16 Dr. Hal Keeter, he's Vice President of

17 Administration at the College of the Ozarks. He's  
18 also been a long time member of the Taney County  
19 Regional Sewer District Board of Directors so he  
20 brings a lot of institutional expertise to us there.  
21 Glen Phillips, he's a founder and Director of Shell  
22 Knob Senior Center and Glen's a retired insurance  
23 executive. He brings a lot of business expertise to  
24 us and also a lot of non-profit organization

38

1 expertise. The Shell Knob Senior Center is a  
2 successful non-profit organization that deals with  
3 senior needs in the Shell Knob area. And I'm a  
4 Director as well. The organization really is very  
5 similar to the organization and governance of an  
6 electric cooperative. It's a non-profit,  
7 member-owned corporation. We do have 501C12 IRS  
8 status. Membership in the company is gained by  
9 taking service, again, just like in an electric  
10 cooperative. When you come in and - and join,  
11 you're - you become a member of the corporation and  
12 you - you have ownership. It's governed by a Board  
13 of Directors elected from its members and right now,  
14 we're still in the startup mode. We don't have any  
15 - any paid employees. We're contracted for all of  
16 our services. Where we are today - own and operate  
17 individual cluster waste water treatment systems.

18 We have construction permits issued for  
19 approximately two hundred new service connections.  
20 We're sending out bills right now today for, I  
21 think, about sixty service connections. Something  
22 like that. We're in frequent contact with new  
23 developments and developers. There's a lot of rapid  
24 growth in our area and we are finding that our - our

39

1 biggest challenge is not finding new customers, it's  
2 getting the facilities built to serve those people.  
3 And we have, again, several other existing clusters  
4 that are working to join Ozark Clean Water Company  
5 so if we have been formerly approved as a continuing  
6 operating authority, the regulations were silent on  
7 non-profit sewer companies. They were promulgated  
8 prior to the --

9 END OF TAPE THREE, SIDE A

10 BEGINNING OF TAPE THREE, SIDE B

11 MR. HELMS: local government agencies that sewer  
12 districts and county health departments and -  
13 getting along well with those. Where we're headed -  
14 we're looking at rapid growth and customer account.  
15 We've projected over two thousand connections by  
16 2010. There is a significant need for services in  
17 our area. It's one of the - the most rapidly

18 growing areas in the state and a lot of the  
19 development is not served by conventional waste  
20 water collection and treatment systems. So there is  
21 a - a major need for the types of services that we  
22 provide. We're working to provide some water  
23 service as well as sewer service. That's going to  
24 require a - some legislative action and we're

40

1 transitioning from appointed to elected Board of  
2 Directors, basically, walking the walk. We've -  
3 we've got it started so now we've got to do it and  
4 what we're hoping to do is be the conduit to get the  
5 SRF funds - the onsite system owners. Ozark Clean  
6 Water Company will take the financial risk with  
7 associated with loans and basically assure that all  
8 systems are properly operated and maintained. We'll  
9 only be using SRF funds to repair or replace  
10 existing systems. We won't be using SRF funds to  
11 foster new development, I guess, is the way that I  
12 want to say that. And every system that we install,  
13 of course, is properly permitted whether it's  
14 through DNR or the local health department. So  
15 that's kind of where we are. I'd be happy to answer  
16 any questions that anybody had.  
17 COMMISSIONER HAUSER: You think you'll soon have  
18 two hundred sixty customers? Did I understand



19 correctly?  
20 MR. HELMS: Yeah, we've got - we're billing sixty  
21 customers or so right now and there are facilities  
22 with actual construction permits issued that are  
23 being built right now that will bring us to that as  
24 soon as they are finished. Yeah, that would be very

41

1 soon. Other questions?  
2 COMMISSIONER HARDECKE: Where did you get the money to  
3 start up what you've done so far?  
4 MR. HELMS: The startup money is through a - a  
5 demonstration grant that EPA gave to Table Rock  
6 Water Quality, Inc. They got - they got a two  
7 million dollar grant to demonstrate  
8 decentralized waste water management around Table Rock  
9 Lake and Ozark Clean Water Company is a direct  
10 result of that project. They're providing the  
11 startup funding. Thank you.  
12 CHAIRMAN HERRMANN: Thank you, sir.  
13 COMMISSIONER HARDECKE: I got one more question for  
14 you. What is an average bill or how do you bill  
15 people or determine what --  
16 MR. HELMS: We - we conducted a rate study and the -  
17 the bill for a homeowner that's on a cluster or one  
18 of these advanced treatment systems is twenty-eight

19 dollars and fifty-three cents a month and what that  
20 covers is operation, maintenance, repairs. There's  
21 no debt service associated with that.

22 COMMISSIONER HAUSER: Those two hundred sixty  
23 customers will be roughly ninety-thousand dollars a  
24 year. That's why I asked him, but when you throw

42

1 debt service into the mix, it increases - the rates  
2 are going to have to go up.

3 MR. HELMS: When you throw debt service in, it  
4 absolutely will. That's correct.

5 COMMISSIONER HARDECKE: So what you've built to this  
6 point was with your grant money?

7 MR. HELMS: Correct. Grant money and local match.

8 CHAIRMAN HERRMANN: Thank you, sir.

9 COMMISSIONER HARDECKE: How will - how will we  
10 differentiate between the new development and your  
11 proposing this money to go into retrofitting  
12 existing properties.

13 MR. HELMS: That's correct.

14 COMMISSIONER HARDECKE: So will it be on an individual  
15 property basis?

16 MR. HELMS: Yes. That's part of our application was  
17 that - that we would take the responsibility for  
18 determining the applicant's need and the applicant's  
19 ability to repay, basically. Okay?

20 COMMISSIONER HARDECKE: So is the need of a person  
21 having a second home at the lake greater than one of  
22 us that's paying the taxes?  
23 MR. HELMS: No, sir, it's not, but where we're  
24 seeing the - the need is on some of the stuff that I

43

1 was showing you there that - that the trailer park  
2 with the single cell lagoon. A primary residence  
3 with septic tank effluent servicing in the front  
4 yard and a homeowner that works in the - the tourism  
5 industry that's a seasonal job and the - their  
6 making a living, but when it comes time to upgrade a  
7 failed septic system and you're looking at a - an  
8 install cost of anywhere from ten to fifteen  
9 thousand dollars, that homeowner just can't come up  
10 with a lump sum for that. Yeah, they can make a  
11 payment over time, but they can't come up with a  
12 lump sum to - to pay that and that's - and that's  
13 the need that we're trying to meet.

14 COMMISSIONER HARDECKE: So then on your new  
15 development, are you charging them a higher rate to  
16 cover the capital costs?

17 MR. HELMS: On the new development, we're - we're -  
18 it's hundred percent contribution from the  
19 developer. The company is not putting in any money

20 for construction of new facilities. We can't. It  
21 doesn't have any source of funds for that.  
22 COMMISSIONER HARDECKE: So the developer puts it in  
23 and then you take ownership of it?  
24 MR. HELMS: Correct. That's correct.

44

1 CHAIRMAN HERRMANN: We have a card from Betty Wyse  
2 and David Casletto. Is there anything additional to  
3 what Mr. Helms has said that you'd like to expand  
4 on? Betty?  
5 MS. WYSE: Hello, Chairman Herrmann and  
6 Commissioners. It's good to see you again. I  
7 wanted to express my support for this proposal and I  
8 would also offer to help answer any questions. I  
9 worked in the position that Becky Shannon has  
10 currently and approximately fifteen years ago, began  
11 working with SRF to try to develop some kind of a  
12 proposal to help individual homeowners that couldn't  
13 afford to upgrade a failing septic system using the  
14 SRF and finally, we're getting there. You have in  
15 front of you the ideal proposal. It will service  
16 individuals that can't afford to replace their  
17 system with an out-of-pocket cash payment. It's a  
18 high priority area of the State. Beautiful area.  
19 Development is - is rampant. The company absorbs  
20 any kind of liability so you have guaranteed

21 maintenance, guaranteed replacement. You have  
22 everything that we looked for all those years in  
23 developing the program and I want to commend the  
24 Staff and Ozark Clean Water for putting together the

45

1 proposal that they have in front of you and I hope  
2 you see your way clear to approve this.

3 CHAIRMAN HERRMANN: Thank you, Betty. Any further  
4 questions or discussion? The Chair would entertain  
5 a motion relative to the Ozark Clean Water Company.

6 MR. BRYAN: Can I ask if it's urgent that this be  
7 approved today?

8 MR. GARRETT: We are not really asking for  
9 approval. We have in our intended use plan a  
10 million dollar set aside for nonpoint source  
11 initiatives and what we're looking for is unless the  
12 Commission would desire otherwise, we would continue  
13 to proceed down the road of this proposal and set  
14 aside the, you know, five hundred thousand dollars  
15 of that million for Ozark Clean Water Company and  
16 continue to work with them and - and get something  
17 off the ground.

18 MR. BRYAN: But you can - you can do that without a  
19 vote or approval from the Commission until the next  
20 use plan?

21 MR. GARRETT: We believe so. You know,  
22 because we have that set aside in the intended use  
23 plan originally, but we wanted to make sure  
24 that we had the - the opportunity to present this

46

1 proposal to the Commission so that the Commission  
2 was aware of what we were looking at and, you know,  
3 express any thoughts or desires, concerns that they  
4 may have.  
5 MR. BRYAN: From - from my perspective, there -  
6 there - this is a great idea. It might be something  
7 that can help if the Commissioners raise any  
8 questions, but I see a couple of legal details that  
9 are probably things that we can fix and they may not  
10 even be problems, but there are just a couple of  
11 things that jump out at me. And so if it's not  
12 needed for a vote today, I'd recommend that we -  
13 give us a little time to go through this, talk to  
14 you about it and then at the next time - when it's  
15 needed for Commission approval, we can do that. We  
16 can maybe straighten out these issues before it  
17 comes to that. Yeah, if you don't - if you don't  
18 have to take any action, I wouldn't do that.  
19 CHAIRMAN HERRMANN: Take a table or anything else,  
20 just hold it over, okay. Pending legal review,  
21 thank you. Drop down to variances. Yes, sir?

22

23 MR. CASALETTO: These schools, you know, the  
24 schools that have been pumping, there is a little

47

1 bit of urgency here. In this, and - and I'm not  
2 sure we - we made the distinction clear. In the  
3 proposal that I actually wrote with help from DNR  
4 Staff, I think you were referring to some  
5 percentages and the way interest of structures and some -  
6 some details of the process that we're more than  
7 willing to change or do whatever needs to do, but I  
8 would encourage that if there is no other problems  
9 with the concept that we could move forward and  
10 allow us and the Staff to - to proceed with the  
11 project because the - you know, there are some  
12 things we'd like to get started on this and so I'd  
13 just - is there any other questions or problems - is  
14 that the way you see it, Mr. Bryan?

15 MR. BRYAN: Well, I think that if we work with Staff  
16 and with you, we can figure out - patch up a couple  
17 of these things here. There's one issue for the  
18 Commission under 644.111, it says, "The Commission  
19 is the agency for the administration of such funds  
20 which are available for assistance," so what - what  
21 this appears to me is that you're going to be

22 delegating your statutory authority to a private  
23 company and so we need to proceed very carefully  
24 about the legal details of how you do that. If you

48

1 don't do it right, it may be an unlawful exercise of  
2 your authority. That's all I want to do is make  
3 sure that the specifics of the proposal --

4 MR. CASALETTO: Okay, thank you very much for  
5 your concern.

6 CHAIRMAN HERRMANN: That's not a long term - term  
7 deal.

8 COMMISSIONER HARDECKE: I got one question. How - how  
9 will you - if we allocate this lump sum to you then  
10 you will determine who is in need and what that need  
11 is so - I really have a strong feeling that the  
12 taxpayers shouldn't be asked to fund somebody's second  
13 home at the lake and I - I - I think the work you've  
14 outlined is good and with your new development and  
15 coming - that coming in under your program that's a  
16 good idea, but is there - do you understand what I'm  
17 getting at?

18 MR. CASALETTO: Well, I do, and in the last  
19 proposal and when we originally started talks with  
20 Staff with DNR, we were proposing a sharing of the  
21 financial risk. In other words, in fact, the  
22 proposal you had in your packets a month ago had a



23 fifty-fifty sharing of risk. There seems to be that  
24 they don't - that DNR a lack of - they don't want to

49

1 take that risk. They don't want to jeopardize these  
2 SRF funds and so Ozarks Clean Water is willing to -  
3 to screen the applicants and take on the financial  
4 responsibility to overcome that obstacle, but when  
5 we do so, you have to allow us to make the  
6 determination because if - if we're taking on all  
7 the financial risk, we have to - to - so the company  
8 stays viable and continues its mission, we have to  
9 make sure that we can repay. And - and so we do  
10 look at need, but we also have to make sure that -  
11 that, for example, that the trailer park can or we  
12 can tie them up to where they will repay or they  
13 could run Ozark's Clean Water out of business and  
14 for sure, we want the overall mission to succeed.  
15 So, our goal is not either to, you know, to try and  
16 finance people that can afford it, but we also have  
17 to make sure that they have that ability of  
18 repaying.

19 COMMISSIONER EASLEY: I have a question. You - the  
20 gentleman before you indicated the cost of the units  
21 was approximately ten thousand dollars for an  
22 individual unit and he also indicated that the fee

23 was twenty-eight dollars and fifty-three cents per  
24 month. I believe somewhere in here it indicated

50

1 that it be repaid over twenty years. Well,  
2 twenty-eight dollars and fifty-three cents per month  
3 for twenty years is only sixty-eight hundred  
4 dollars. That's not going to repay that - that ten  
5 thousand dollar loan plus interest. So where -  
6 where - where does - who covers the shortfall?

7 MR. CASALETTO: No, the twenty-eight  
8 fifty-three does not include any debt service or  
9 interest whatsoever. No principal or interest.  
10 That's maintenance costs. For example, when a  
11 developer gives their system to Ozark Clean Water  
12 Company after they are building a brand new system,  
13 they deed it over at no charge. We bill each  
14 customer twenty-eight fifty-three a month for  
15 maintenance. Principal and interest is above the  
16 twenty-eight fifty-three.

17 COMMISSIONER EASLEY: But who pays that?

18 MR. CASALETTO: In the case of the SRF loan,  
19 the - the property owner would pay it, so, in other  
20 words, if - if - and we'll just throw this number  
21 out because we're talking here. If that number was  
22 another thirty dollars a month or forty dollars a  
23 month, then their bill would be seventy-eight

24     dollars and fifty-three cents.

51

1     COMMISSIONER EASLEY:    Okay, well it didn't indicate  
2     that in your presentation.    In other words, their  
3     fee is going to be twenty-eight plus thirty or forty  
4     dollars.    It's going to cost them fifty to seventy  
5     dollars a month.

6     MR. CASALETTO:    Right, and - and a lot - a lot  
7     of this time this is more viable for a cluster-type  
8     system where you're putting a group of homes on a  
9     sand filter or - than maybe a single family home,  
10    but it will be up to the people.    But if they do  
11    have to replace their - their system due to a  
12    failure, then it sure helps them out, you know --

13    CHAIRMAN HERRMANN:    I think we're going to hold over  
14    for legal review and these questions will be  
15    appropriate for the next time for the next meeting.  
16    Thank you, sir.    Yes?

17    COMMISSIONER PERRY:    Mr. Chairman, I have found  
18    information on the record on which I can base a  
19    motion I was about to make awhile back, so I would -  
20    I understand under Robert's rules, I would like to  
21    make a motion to reconsider and that would be to  
22    reconsider the motion on Table H and I would like to  
23    add an amendment to that motion.    Can I - may I go

24 ahead?

52

1 CHAIRMAN HERRMANN: Yes, Mr. Roberts isn't here.

2 COMMISSIONER PERRY: I would like to  
3 make a motion to amend the prior list of amendments  
4 to Table H in which we remove three water bodies  
5 from the whole body contact list and I would like to  
6 add to that Coon Creek, which is Water Body  
7 Identification Number 132, located in Randolph  
8 County, Missouri, on the basis that there is no  
9 evidence that the - that water segment is used for  
10 fishing or swimming at all and that it meets the  
11 depth requirements.

12 COMMISSIONER HAUSER: Second.

13 CHAIRMAN HERRMANN: Discussion? Bearing none, the  
14 Chair would entertain a motion relative to exclusion  
15 of Coon Creek from whole body contact - that's -  
16 that's Coon Creek in Randolph County, right?

17 COMMISSIONER PERRY: Yes.

18 CHAIRMAN HERRMANN: From the requirements for whole  
19 body contact at Table H of 7.031. Been moved and  
20 seconded, so we'll call for the vote. Marlene,  
21 please?

22 MS. KIRCHNER: Commissioner Perry?

23 COMMISSIONER PERRY: Yes.

24 MS. KIRCHNER: Commissioner Kelly?

1 COMMISSIONER KELLY: No.

2 MS. KIRCHNER: Commissioner Hardecke?

3 COMMISSIONER HARDECKE: Yes.

4 MS. KIRCHNER: Commissioner Easley?

5 COMMISSIONER EASLEY: Yes.

6 MS. KIRCHNER: Commissioner Hauser?

7 COMMISSIONER HAUSER: Yes.

8 MS. KIRCHNER: Chairman Herrmann?

9 CHAIRMAN HERRMANN: Yes. Okay, move on to

10 variances. Miami R-I School District. Richard

11 Laux?

12 MR. GALBRAITH: In light of the time and the amount

13 of agenda we have left to get through, I ask Staff

14 to summarize briefly the material and then if they

15 have any questions. Thanks, Richard.

16 MR. LAUX: The first variance relates to the Miami

17 R-I School District. They're requesting a variance

18 from the requirement to perform a water quality

19 study prior to getting alternate limits for a lagoon

20 and trickling filters. This happens to be a lagoon

21 that's been utilized for about thirty years without

22 a permit. The Department became aware of the

23 situation as a result of a complaint from the next

24 door neighbor, who is a new neighbor, I believe.

1 The School District wishes to renovate the lagoon  
2 and obtain the required permit, but doesn't want to  
3 delay the needed repairs and spend money on stream  
4 repair, they'd rather go right to fixing the  
5 problem. Staff is recommending the Commission grant  
6 approval of the request with several conditions that  
7 were - let's see, here they are, providing  
8 engineering assessment of the existing lagoon, apply  
9 for an operating permit, in stream monitoring in the  
10 stream - in the permit, and a re-opener clause.  
11 And, again, we're recommending preliminary approval.  
12 There is a representative of the School District  
13 who has traveled all the way here today and has been  
14 waiting. I'm not real sure if he wants to make a  
15 statement or not, but he is here in case you have  
16 questions.

17 COMMISSIONER HAUSER: I move we accept Staff  
18 proposal - Staff recommendation.

19 COMMISSIONER HARDECKE: Second.

20 CHAIRMAN HERRMANN: Moved and seconded. I'm going  
21 to come back to one of my age old questions,  
22 Richard. You say require a monitoring and again  
23 I'll ask, monitoring of what?

24 MR. LAUX: The classified stream in this particular

1 case.

2 CHAIRMAN HERRMANN: Classified stream.

3 MR. LAUX: Right.

4 CHAIRMAN HERRMANN: Which is how far away?

5 MR. LAUX: It's about a mile - a little less, maybe,

6 but about that.

7 CHAIRMAN HERRMANN: So the monitoring will be on the

8 classified stream.

9 MR. LAUX: Right. The classified stream because in

10 this case there's nothing else in between so to

11 speak. Goes down the backside of the property.

12 CHAIRMAN HERRMANN: The effect, if any on the

13 classified stream.

14 MR. LAUX: Right.

15 CHAIRMAN HERRMANN: Very good. Okay, call for the

16 question, please, Marlene?

17 MS. KIRCHNER: Commissioner Hauser?

18 COMMISSIONER HAUSER: Yes.

19 MS. KIRCHNER: Commissioner Easley?

20 COMMISSIONER EASLEY: Yes.

21 MS. KIRCHNER: Commissioner Hardecke?

22 COMMISSIONER HARDECKE: Yes.

23 MS. KIRCHNER: Commissioner Kelly?

24 COMMISSIONER KELLY: Yes.

1 MS. KIRCHNER: Commissioner Perry?

2 COMMISSIONER PERRY: Yes.

3 MS. KIRCHNER: Chairman Herrmann?

4 CHAIRMAN HERRMANN: Yes. Sorry. Okay, Number

5 Eleven. The City of Macon.

6 MR. LAUX: This is a new request from the City of

7 Macon. This request relates to the numeric effluent

8 limits for ammonia that are in the draft permit that

9 was public noticed previously. Those limits, of

10 course, are based on the current ammonia standards.

11 The City is basically asking for the proposed limits

12 based on the '99 EPA criteria to be used when their

13 permit is issued. Staff has basically investigated

14 and indicated that, you know, if the rule is

15 promulgated as it was proposed and as you approve it

16 today, then this relief would be forthcoming so

17 we're recommending preliminary approval with several

18 conditions - very similar conditions to the last one

19 - in stream monitoring. Essentially, we're

20 recommending approval with those conditions and

21 would not act on the first variance until this one's

22 out one way or the other so we would come out with a

23 permit that captures both of these potential

24 variances. The second one will be next and that's



1 on CSO as you may remember from the last time.

2 CHAIRMAN HERRMANN: Okay.

3 MR. LAUX: There are people here from the city.

4 CHAIRMAN HERRMANN: Yes. Trent Stober, MEC Water  
5 Resources?

6 MR. STOBBER: On behalf of the City, we just affirm  
7 the Department's recommendations and support those  
8 recommendations.

9 CHAIRMAN HERRMANN: Thank you. Dennis Stith from  
10 Shafer, Kline and Warren. Thank you. Vern,  
11 pronounce your name for me? Vern Kincheloe. Thank you.  
12 Greg Maloney? Yes. Okay.

13 COMMISSIONER HAUSER: I'll move that we accept the  
14 Staff recommendation.

15 COMMISSIONER EASLEY: Second.

16 CHAIRMAN HERRMANN: Moved and seconded. Any  
17 discussion? Please call for the vote, Marlene.

18 MS. KIRCHNER: Commissioner Kelly?

19 COMMISSIONER KELLY: Yes.

20 MS. KIRCHNER: Commissioner Perry?

21 COMMISSIONER PERRY: Yes.

22 MS. KIRCHNER: Commissioner Hardecke?

23 COMMISSIONER HARDECKE: Yes.

24 MS. KIRCHNER: Commissioner Hauser?

1 COMMISSIONER HAUSER: Yes.

2 MS. KIRCHNER: Commissioner Easley?

3 COMMISSIONER EASLEY: Yes.

4 MS. KIRCHNER: Chairman Herrmann?

5 CHAIRMAN HERRMANN: Yes. Okay, City of Macon, CSO

6 variance.

7 MR. LAUX: This was the variance that we presented

8 preliminarily last time. It was approved. We had

9 public noticed your intention to approve it this

10 meeting. We did receive one comment. The letter

11 does indicate that they would like the Commission to

12 reject the variance request. I don't want to put

13 any words in his mouth, but basically the letter is

14 talking about the situation with the pipes that you

15 heard something about last Commission meeting with

16 the six foot pipe going to the four foot and then

17 the two foot pipe and indicates the concerns they've

18 had and the issues they've had with building on the

19 lot that they own and I believe that the author of

20 the letter is here.

21 CHAIRMAN HERRMANN: Staff met with the owner, with

22 the complainant?

23 MR. LAUX: I believe that the Regional Office and

24 the City did meet with them right after the last

1 meeting. I - I wasn't in attendance; however, I  
2 know the Regional Office staff was there and the  
3 city folks did meet with them.

4 CHAIRMAN HERRMANN: Anyone from the City seen this?

5 MR. LAUX: I faxed a copy to them some time this  
6 week, I believe or --

7 CHAIRMAN HERRMANN: Anybody from the City wish to  
8 comment on the complaint?

9 MR. STOBBER: Trent Stober with MEC Water Resources.  
10 The City's just here and available for any questions  
11 you might have about the comment on it.

12 CHAIRMAN HERRMANN: Okay, thank you. Is there any  
13 other questions or comments? Greg Maloney? You  
14 didn't stick to your word, sir.

15 MR. MALONEY: I want to thank you all for the  
16 opportunity to spend another stimulating day with  
17 you. Anyway, the letter is not from me, it's from  
18 residents. If you look at the back page, there's  
19 four different - or eight different signatures of  
20 people who live along that street and their main  
21 concern is most of them were appalled that raw  
22 sewage had been released and is still, on occasion,  
23 as recently as June, been released from the sewer  
24 line. Excuse me, I'm a little nervous. The City

1 has known about this problem that we can document  
2 until at least 1997. A crane engineering report  
3 made references to the problem and it also states  
4 that Mr. Carr, who was the Waste Water  
5 Superintendent at the time, said that the discharge  
6 of the sewers was not an uncommon occurrence. That  
7 is an attachment - is the attachment with that?

8 CHAIRMAN HERRMANN: Yes.

9 MR. MALONEY: Okay, it is in the attachment of the  
10 letter. The residents do not want to see the City  
11 penalized or fined or anything else. What they want  
12 is for the conditions to be corrected. This is a  
13 problem that's been ongoing since - for at least -  
14 at least decades, possibly forty years. We held two  
15 meetings. We requested - two - there was two  
16 meetings held. One on July 6th with the City and  
17 another one, a public one, held at a later date.  
18 One of the landowners who has the property where  
19 most of the creek flows through, Mr. and Mrs.  
20 Johnson, says that the creek now smells like an open  
21 - sometimes smells like an open sewer and their  
22 livestock won't drink from the water. They have  
23 seen sewage residue including feminine hygiene  
24 products floating from the creek. The makeup of

1 these releases contains storm, industrial and  
2 sanitary sewers that are mixed at the grid chamber.  
3 The City's proposal - well, actually, the way I  
4 understand it and they can contradict me, would  
5 allow raw, untreated sewage to be dumped directly  
6 into the creek. Is that correct? Even though it  
7 will be, you know, extremely diluted.

8 MR. GALBRAITH: No, the proposal before you that the  
9 Commission has to consider has nothing to do with  
10 dumping raw sewage into the creek. Macon does  
11 currently have the unfortunate situation that during  
12 high - wet weather events, their combined sewer does  
13 discharge to the creek untreated. That's what their  
14 trying to fix.

15 MR. MALONEY: Right.

16 MR. GALBRAITH: What this does is remove a standard  
17 for BOD and TSS that they cannot comply with until  
18 they - you know, they just can't comply with it.  
19 So, what - what - this is the first step or one of  
20 the steps in their overall plan to correct that  
21 negative situation that you're describing.

22 MR. MALONEY: Okay, Phase One, if I understand, is a  
23 separation of storm and sewer, which would be  
24 directed straight into the creek bypassing the grid

1 chamber.

2 MR. GALBRAITH: No, I don't think that's correct.

3 CHAIRMAN HERRMANN: Of storm water, not sanitary.

4 MR. MALONEY: Pardon?

5 CHAIRMAN HERRMANN: Of storm water, not sanitary

6 water. MR. MALONEY: I'm - I'm sure it's both.

7 MR. GALBRAITH: The very narrow issue before the

8 Commission today is one that the Commission voted on

9 several - several meetings ago whether to approve

10 variances from the State's forty-five forty-five

11 limits for CSO recognizing that the cities with CSO

12 problems couldn't meet those limits. It was not in

13 any way to remove the obligation from the cities to

14 address their CSO problems and - and that - there

15 are separate issues in terms of what the Commission

16 has to consider today.

17 CHAIRMAN HERRMANN: This is an interim step.

18 MR. GALBRAITH: This is an interim step.

19 CHAIRMAN HERRMANN: Okay, the CSO program, Mr. Stith

20 explained to us in our tour up there.

21 MR. GALBRAITH: When they develop a long term

22 control plan, that will be subject to public review

23 and comment. Am I right? So that would be the

24 opportunity for the citizens - that - that's the

1 issue that you're really concerned about. That's -

2 that would be the time for the citizens to say,  
3 "We've reviewed the plan and we disagree with it or  
4 it needs to be faster or it needs to be better," or  
5 something like that. That's - today's variance is  
6 not - it's - is just not part of that process.  
7 MR. MALONEY: Okay, it is not part of the approval  
8 of this one?  
9 MR. GALBRAITH: Things that you are telling the  
10 Commission - things that you're telling the  
11 Commission aren't things that they - they're just  
12 not - I don't - I don't want to say the word  
13 relevant, but they really don't apply to the very  
14 narrow issue that they have to vote on today and -  
15 and - and there - if they approve this variance, it  
16 doesn't make any of those other issues go away - any  
17 of the long term control plan, the Phase One, the  
18 rest of that. But it's just not something the  
19 Commission can deal with here today.  
20 MR. MALONEY: So this is not a meeting for approval  
21 for them to start Phase One?  
22 CHAIRMAN HERRMANN: That's already underway.  
23 MR. GALBRAITH: No, that's already - they're already  
24 - that's a separate process that's already ongoing.

1 This is simply about meeting an effluent limit for

2 their CSO's that the Commission recognized months  
3 ago, which was not a realistic limit within State  
4 regulation.

5 MR. MALONEY: Okay. Well, I apologize. You can  
6 understand these people's concerns. They live along  
7 this street. Raw sewage has for years during heavy  
8 storms been released in the creek and along the  
9 ditches of the road. Phase One is a start, but  
10 Phase One, as I was told, and you can correct me if  
11 I'm wrong, is a combination storm and sewer direct  
12 release into the creek.

13 MR. GALBRAITH: Well, the details of that I'm - I'm  
14 not prepared to answer. It sounds to me like DNR  
15 and maybe the City - we need to do a better job and  
16 maybe that's the message here. We need to do -  
17 sounds like maybe we have a start on some of our  
18 public participation with this. I think - I think  
19 what I'm going to do is direct Staff to look into  
20 this issue a little bit more and make sure that we  
21 can get the kinds of information out that we need to  
22 and I - I - I'm sorry, but those issues aren't  
23 what's before the Commission today.

24 MR. MALONEY: Okay.

1 MR. GALBRAITH: Thank you and I'm sorry you had to  
2 wait all day to hear that.



3 MR. MALONEY: It was very stimulating and I even had  
4 my hair done. You know, I think I got ripped off.  
5 CHAIRMAN HERRMANN: I've been working too hard to  
6 even get a haircut.  
7 MR. MALONEY: I don't have too many of those. Thank  
8 you.  
9 CHAIRMAN HERRMANN: Thank you.  
10 MR. GALBRAITH: I - I'd just like to add --  
11 CHAIRMAN HERRMANN: I'd encourage you, Mr. Maloney,  
12 to work with the City. They're aware of your  
13 problem and they're trying to correct it and I think  
14 it's a long term project and I'm sure the City will  
15 and the Staff will be working with you, to seek an  
16 acceptable solution to your problem.  
17 MR. MALONEY: Forty years, the problem should have  
18 been corrected.  
19 CHAIRMAN HERRMANN: Yeah.  
20 MR. MALONEY: Thank you.  
21 CHAIRMAN HERRMANN: Thank you. Are you going to  
22 give us some words of wisdom, Mr. --  
23 MR. KEN MIDKIFF: I will, as usual. Actually, I  
24 had not intended to say anything and I had told

66

1 Richard I wasn't going to but I - I couldn't resist.  
2 I'm on the Combined Sewer Flow slash Wet Weather

3 Working Group, as are a number of other people in  
4 this room including the folks from Macon. My  
5 concern is not so much of the variance and the  
6 forty-five forty-five rule, we've discussed all  
7 those things and Phil isn't here. My concern is  
8 about the length of the periods and that based on  
9 what we report out of the CSO Working Group, this  
10 variance may not be either necessary or it could be  
11 that it conflicts with the eventual rule, so I would  
12 urge you to add one simple phrase to the variance,  
13 "Pending submission and review of the CSO / Wet  
14 Weather Working Group report." Thank you.

15 CHAIRMAN HERRMANN: Is that acceptable to --

16 MR. GALBRAITH: I - I can't recommend or not. I  
17 haven't read - I haven't read the original policy on  
18 this lately so I don't know if that's consistent  
19 with that --

20 MR. STOBBER: I'm not sure what that - what that  
21 request was again. Again, if you don't mind.

22 MR. MIDKIFF: Oh, my request was simply that  
23 the variance be pending upon the submission or  
24 review and submission of the CSO Working Group

67

1 report, which you're on, Trent.

2 CHAIRMAN HERRMANN: Any approval - the approval of  
3 the recommendation.

4 MR. MIDKIFF: That's correct. Yeah, again,  
5 my concern was the length of time of the variance.  
6 Normally, variances are given until something  
7 occurs. This seems to be the - the variance would  
8 be for the life of the permit and that concerns me a  
9 bit.

10 CHAIRMAN HERRMANN: Okay.

11 MR. GALBRAITH: Do you mean the decision be pending  
12 like the decision would be up in the air or that the  
13 variance only last so long as --

14 MR. MIDKIFF: That the variance be reconsidered  
15 based on the CSO Working Group Report or however you  
16 word it, Ed.

17 MR. BRYAN: The statute 644.0161 that applies to  
18 variances for the Commission says that no variance  
19 shall be granted for a period of time greater than  
20 reasonably necessary for complying. A time  
21 constraint on it would be a good suggestion.  
22 Whether that's the right one or not, I don't know,  
23 but a variance is not forever. It is for a time  
24 that is reasonably necessary to comply with the

1 standard.

2 MR. STOBBER: It's my understanding and - and  
3 assumption for this variance would be for the life

4 of this permit and, you know, through the long term  
5 control planning process and so forth, I believe  
6 we're addressing everything that the - essentially  
7 that the CSO Working Group is going to come up with,  
8 but, again, I would just suggest that we just - we  
9 get the variance for the life of this permit and  
10 then implement --

11 CHAIRMAN HERRMANN: What's the life of the permit?

12 MR. STOBBER: Five years was the request, I believe.

13 CHAIRMAN HERRMANN: Five years. Was that a definite  
14 time, Mr. Bryan?

15 MR. BRYAN: Well, it is a definite time, but it's  
16 not up to me to say what a period of time would be  
17 greater than reasonably necessary for time. I don't  
18 know the answer to that question.

19 COMMISSIONER KELLY: How long --

20 MR. BRYAN: That's the legal standard.

21 CHAIRMAN HERRMANN: I know what you're saying.  
22 Something like to be reviewed the variance is to be  
23 reviewed. The plan is when the permit is up for  
24 review. By that time, there should be certainly be

69

1 a wet weather stake - stakeholders group and the  
2 City should have a proposal and be along in their  
3 CSO program.

4 MR. STOBBER: I would say so.

5 CHAIRMAN HERRMANN: So, you're proposal would be to  
6 make it part of this permit with the condition that  
7 it be reviewed when the - when the permit is - is up  
8 for renewal?

9 MR. STOBBER: Oh, sure.

10 MR. GALBRAITH: And that goes without saying.

11 MR. STOBBER: Right, which - which every permit is  
12 scrutinized at that point. Sure and with all these  
13 water quality standards changes every permit, I  
14 would assume, that's renewed is going to go  
15 under those types of reviews.

16 MR. GALBRAITH: My - my concerns with Ken's  
17 suggestion is that a lot of - a lot of time between  
18 approving the report of the CSO Work Group and  
19 actually getting long term control plans in and then  
20 implementing them and we're going to be - we're - in  
21 that interim, we're going to be right back where we  
22 started with facilities out of compliance because  
23 they can't make forty-five forty-five, which we know  
24 that today and the Commission's already decided to -

70

1 to grant variances on a case-by-case basis so I - I  
2 would be concerned with that.

3 COMMISSIONER HAUSER: I move that we accept Staff's  
4 original recommendation.

5 CHAIRMAN HERRMANN: Yes, sir. (Inaudible)  
6 MR. GALBRAITH: No, they'll still have to monitor,  
7 the only question is to whether they'll be in  
8 violation of their permit if they don't meet the  
9 forty-five forty-five standards. That's the only  
10 issue here. It's - it's a matter of where'll they  
11 be technically in violation or not with the BOD and  
12 TSS standard.  
13 CHAIRMAN HERRMANN: Okay, do we have a motion? Did  
14 we get a second?  
15 COMMISSIONER PERRY: I'll second.  
16 CHAIRMAN HERRMANN: Any more discussion? Okay, call  
17 for the question, please, Marlene?  
18 MS. KIRCHNER: Commissioner Easley?  
19 COMMISSIONER EASLEY? Yes.  
20 MS. KIRCHNER: Commissioner Kelly?  
21 COMMISSIONER KELLY: Yes.  
22 MS. KIRCHNER: Commissioner Perry?  
23 COMMISSIONER PERRY: Yes.  
24 MS. KIRCHNER: Commissioner Hardecke?

71

1 COMMISSIONER HARDECKE: Yes.  
2 MS. KIRCHNER: Commissioner Hauser?  
3 COMMISSIONER HAUSER: Yes.  
4 MS. KIRCHNER: Chairman Herrmann?  
5 CHAIRMAN HERRMANN: Yes. Okay, Richard, you're back

6 in the hot seat.

7 MR. LAUX: Okay, the next two are final actions from

8 last Commission meeting where you granted

9 preliminary approval. First one is the Village of

10 Luray. We did not receive any comments and so we're

11 here to ask for final approval of this particular

12 variance, which, again, relates to the use of lagoon

13 limits without a water quality study.

14 COMMISSIONER PERRY: I move that the Commission

15 accept the Staff recommendation and grant approval

16 of the variance with the recommended conditions.

17 COMMISSIONER EASLEY: Second.

18 CHAIRMAN HERRMANN: For both?

19 MR. LAUX: We can do them both together or could --

20 CHAIRMAN HERRMANN: Revere and Luray?

21 COMMISSIONER PERRY: Want to do them both together?

22 COMMISSIONER EASLEY: Sure.

23 COMMISSIONER PERRY: Okay, and then to my motion to

24 read that I move the Commission accept the Staff

72

1 recommendation and grant approval of variance of the

2 recommended conditions of both the City of Luray and

3 the City of Revere.

4 COMMISSIONER EASLEY: Second.

5 CHAIRMAN HERRMANN: Moved and seconded. Please call

6 for the vote, Marlene.

7 MS. KIRCHNER: Commissioner Hardecke?

8 COMMISSIONER HARDECKE: Yes.

9 MS. KIRCHNER: Commissioner Perry?

10 COMMISSIONER PERRY: Yes.

11 MS. KIRCHNER: Commissioner Kelly?

12 COMMISSIONER KELLY: Yes.

13 MS. KIRCHNER: Commissioner Easley?

14 COMMISSIONER EASLEY: Yes.

15 MS. KIRCHNER: Commissioner Hauser?

16 COMMISSIONER HAUSER: Yes.

17 MS. KIRCHNER: Chairman Herrmann?

18 CHAIRMAN HERRMANN: Yes.

19 MR. LAUX: Thank you.

20 CHAIRMAN HERRMANN: Thank you, Richard. Bill Bryan?

21 That young lady's been waiting patiently.

22 DUNCAN'S POINT APPEAL

23 END OF TAPE THREE, SIDE B

24



The Commission is to consider the Hearing Officer's recommended order and decision dismissing both appeals.

The purpose of the hearing is to provide the parties the opportunity to comment on the recommended order of Hearing Officer Howard Paperner and the recommended decision by Hearing Officer Karen Winn.

A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, 1101 Riverside Drive, Jefferson City, Missouri.

1

1 MR. BRYAN: On Washington Sand Company, we basically  
2 have a - a stipulated agreement that will conclude  
3 the motion for stay on - on that appeal so unless  
4 there are questions about it, we'll just pass that  
5 around and you all can execute it. But we'll simply the  
6 stay the term that has been appealed pending the  
7 completion of the appeal and the two orders - I  
8 believe they're working on that. I think we'll - we  
9 either iron it out pretty quickly or get to a  
10 hearing. I'm sorry? (Inaudible) That was under  
11 your protocol. That was something you wanted to  
12 come back to.

13 CHAIRMAN HERRMANN: Yeah.

14 MR. BRYAN: And on Number Nineteen, the St. John's  
15 Bayou Appeal, Mr. Hiesel is here. We also have a  
16 stipulated dismissal with prejudice in that appeal.  
17 I don't think it's necessary to discuss it any  
18 further. We'll circulate that. Ted, do you have

19 anything you want to say about that?  
20 If there are questions, you can do that, otherwise,  
21 we can circulate that with your signature as well.  
22 CHAIRMAN HERRMANN: Okay.  
23 MR. BRYAN: And that's it for the legal agenda.  
24 Legal report was a fixed item on the agenda and,  
25 again, I'll be very brief. Just to update you on  
26 where we're at. Since we last reported on the year,

2

1 we have opened forty new cases - Clean Water cases  
2 at the request of the Department and the Commission  
3 and we've closed forty-eight cases this year and  
4 we've recovered, as of July 1, a little over 1.4  
5 million dollars and that's not representative of an  
6 average case because we did have one case, the  
7 Bagnell Dam litigation, that contributed 1.3 million  
8 dollars. So, the average - it skews what the  
9 average is, so you shouldn't think that in every  
10 case we're out there taking fifty thousand dollars  
11 from people because that's not the way it works. If  
12 you have a question about particular cases, I'd be  
13 happy to - to help - help you out with those now or  
14 later.  
15 CHAIRMAN HERRMANN: Okay, Ed - where'd Ed go? Ed,  
16 do you want to hold off on any of these updates?

17 MR. GALBRAITH: Yeah, in consideration of the late hour  
18 END OF TAPE FOUR, SIDE A  
19 BEGINNING OF TAPE FOUR, SIDE B  
20 MR. GALBRAITH: - plate of discussion and Director's  
21 update.  
22 CHAIRMAN HERRMANN: Okay.  
23 MR. GALBRAITH: That only - well, that only -  
24 there's public comment and correspondence and future  
25 your meetings.  
26 CHAIRMAN HERRMANN: Yeah, so okay, the - do we have

3

1 any public comments or correspondence? Anybody make  
2 any comment? You stayed to the bitter end.  
3 MR. MAHFOOD: I've got perseverance, Mr. Chairman.  
4 Mr. Chairman, Commission Members, my name is Steve  
5 Mahfood and I'm here today representing the Nature  
6 Conservancy. I'm not going to go through this two  
7 pages of discussion that I had here, but we're here  
8 and I'm here because we're interested in the  
9 decisions that were made on the designation of  
10 streams and - and the UAA issues that you already  
11 dealt with earlier today. I just wanted to tell you  
12 that we did submit science-based information  
13 concerning forty-one stream segments here in  
14 Missouri and given the - the discussion that took  
15 place earlier and our willingness and the fact we

16 have, here in Missouri alone, seven very good  
17 scientists, five hundred scientists nationally that  
18 work for the organization, which is a  
19 million-member, twelve thousand members in Missouri  
20 organization, we're going to work with Staff and  
21 we'll be looking ahead to some of these issues that  
22 we pointed out in our submittal that I think are  
23 important. I think that we can bring to light and  
24 hopefully bring in the next round that's next year  
25 or whenever that may be some additional changes to  
26 the - to the stream - to the lists and we strongly

4

1 feel that there are a lot of different things that  
2 come into play when you're talking about  
3 fishable/swimmable designation, removing those  
4 designations, and the fact that - that in the Ozarks  
5 here in Missouri, we have a very unique ecosystem  
6 and the health of those streams and the health of  
7 the people that are very much linked. And, with  
8 that, I had, again, a little more formal - a little  
9 more lengthier testimony as kind of like the person  
10 right before lunch, I'm the only person myself, and  
11 maybe a few other people, standing between you and  
12 getting the heck out of here so, Mr. Chairman, thank  
13 you very much and I would just tell you it was a  
14 pleasure to work with Staff and be positive in this  
15 scientific assessment of what we think are - are  
16 important for Missouri streams.

17 CHAIRMAN HERRMANN: Would you offer your experts to  
18 work with Staff to convince the Chairman why our  
19 waste water treatment plants should be turning out  
20 quality of water applicable and comparable to  
21 drinking water plants?  
22 MR. MAHFOOD: I'm not sure if that's the part that  
23 we'll help you with --  
24 CHAIRMAN HERRMANN: Well, the metals content -  
25 concentration. Off the wall.  
26 MR. MAHFOOD: We'll be helpful. I'll just make that

5

1 pledge.  
2 CHAIRMAN HERRMANN: Thank you. Thank you.  
3 MR. MAHFOOD: Thank you very much.  
4 CHAIRMAN HERRMANN: Thank you. Anyone else? Next  
5 meeting, Marlene? November 2nd in the Lewis and Clark  
6 State Office Building. The  
7 new abode of Water Protection Program or whatever  
7 you call it now.  
8 MR. GALBRAITH: We are - we are still the Water  
9 Protection Program. Perhaps we'll have an update at  
10 the next meeting.  
11 CHAIRMAN HERRMANN: We're in a state of flux or  
12 something.  
13 MR. GALBRAITH: Fluid - it's a very fluid situation.  
14 CHAIRMAN HERRMANN: Okay, if there's nothing else, I  
15 declare this meeting

16      adjourned.

Respectfully Submitted,

Edward Galbraith  
Director of Staff